TEXAS REGISTER

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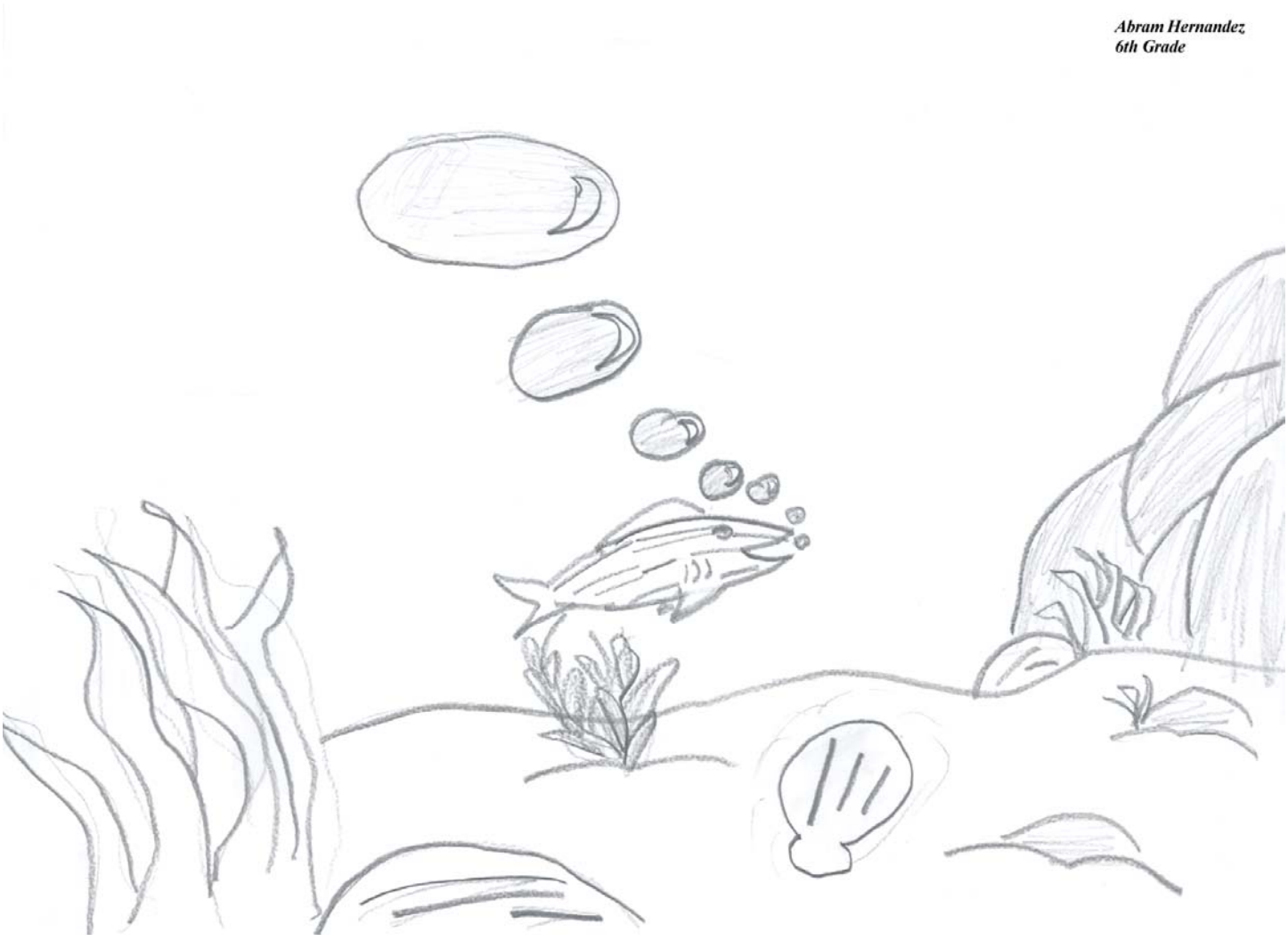

Abram Hernandez
6th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

ADOPTED RULES

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IN ADDITION

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for January 14, 2011

Appointed to the rank of Brigadier General in Headquarters, Texas State Guard, Austin, Texas, pursuant to Government Code §431.055, with all rights, privileges and emoluments appertaining to this office, effective February 1, 2011, Manuel A. Rodriguez of Austin.

Appointments for January 19, 2011

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire August 31, 2011, Thomas C. Halbouty of Southlake (replacing Scott Kennedy of Panhandle who resigned).

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire August 31, 2011, Robert S. Hicks, Jr. of Austin (replacing William E. Morrow of Spring Branch who resigned).

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire August 31, 2011, Randal Hill of Baird (replacing Joel Fontenot of Dallas who resigned).

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire August 31, 2012, C. Mauli Agrawal of San Antonio (Dr. Agrawal is being reappointed).

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire August 31, 2012, Judith Hawley of Portland (Ms. Hawley is being reappointed).

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire August 31, 2012, Terry Chase Hazell of Georgetown (replacing Brett A. Gilbert of College Station whose term expired).

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire August 31, 2012, Rick Ledesma of Harlingen (Mr. Ledesma is being reappointed).

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire August 31, 2012, Robert W. Pearson of Austin (Mr. Pearson is being reappointed).

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire August 31, 2012, Enrique R. Venta of Beaumont (Dr. Venta is being reappointed).

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire August 31, 2012, Aruna Viswanathan of Houston (Mr. Viswanathan is being reappointed).

Appointments for January 22, 2011

Designating Stephanie E. Simmons as presiding officer of the Risk Management Board for a term at the pleasure of the Governor. Ms. Simmons is replacing Ernest C. Garcia of Austin as presiding officer.

Rick Perry, Governor

TRD-201100313

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0940-GA

Requestor:

The Honorable Jerry D. Rochelle

Bowie County Criminal District Attorney

Post Office Box 3030

Texarkana, Texas 75504

Re: Authority of a county judge to contract with a "personal consultant" without approval from the commissioners court (RQ-0940-GA)

Briefs requested by February 18, 2011

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201100318
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 25, 2011

♦ ♦ ♦

Opinions

Opinion No. GA-0835

The Honorable Joel D. Littlefield

Hunt County Attorney

Post Office Box 1097

Greenville, Texas 75403-1097

Re: Constitutionality of Texas Transportation Code section 251.053, concerning a commissioners court's declaration of a public road (RQ-0900-GA)

S U M M A R Y

Section 251.053 of the Transportation Code is not unconstitutional on its face. A commissioners court may exercise its authority to declare a public road under the section, however, only if it does so consistently with article I, section 17 of the Texas Constitution, providing for the payment of adequate compensation. Attorney General Opinion DM-487 is overruled to the extent that it suggests that section 251.053 is unconstitutional on its face.

Opinion No. GA-0836

The Honorable Jane Nelson

Chair, Committee on Health and Human Services

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

The Honorable Todd Smith

Chair, Committee on Elections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of the Regional Transportation Council over transit related projects located in Richland Hills (RQ-0901-GA)

S U M M A R Y

Under chapter 452, Transportation Code, the Regional Transportation Council ("RTC") does not have authority to close the Trinity Railway Express transit station located within the City of Richland Hills (the "City").

Any right in the RTC to seek from the City repayment of federal funds expended in relation to the transit station would likely be determined under existing contracts or agreements governing the provision of those funds.

Opinion No. GA-0837

The Honorable Burt R. Solomons

Chair, Committee on State Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Valuation of a residential dwelling offered as a prize at a charitable raffle (RQ-0905-GA)

S U M M A R Y

Under the Charitable Raffling Enabling Act, the cap on the value of a residential dwelling offered or awarded as a prize at a raffle for which a qualified organization provides any consideration is $250,000, regard-

less of the amount of the donated and purchased items, or who donated or purchased the items, used to construct the dwelling.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201100321

Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 26, 2011

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION
SUBCHAPTER J. STATE PLANNING ASSISTANCE GRANTS

1 TAC §3.9405

The Criminal Justice Division (CJD) of the Office of the Governor proposes the amendment of Title 1, Part 1, Chapter 3, Subchapter J (State Planning Assistance Grants), §3.9405.

The proposed amendment of §3.9405 removes the requirement that regional planning commissions (COGs) submit applications for financial assistance covered by the Texas Review and Comment System (TRACS) to the Office of the Governor's State Grants Team for review and comment prior to submitting the application to any federal, state or other agency. The amendment is proposed because TRACS is no longer necessary or efficient in light of current advancements in technology. TRACS was created in response to Executive Order 12372 signed by President Reagan in 1982. As originally intended, TRACS was designed to facilitate the sharing of information related to grant funding and other activities requiring coordination and input between federal, state, and local governments. However, email and the Internet have provided communication tools for disseminating information quickly and efficiently, making TRACS an unnecessary layer of administration that has been made obsolete given advancements in technology.

Christopher Burnett, Executive Director of CJD, has determined that for the first five-year period following the amendment of this rule: (1) there will be no fiscal implications for state or local government as a result of amending this rule; and (2) the public benefit anticipated as a result of amending this rule will be more efficient processes and procedures. There will be no anticipated economic cost to persons or businesses resulting from the amendment of this rule.

Comments on the proposed amendment may be submitted to David Zimmerman, Assistant General Counsel, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, (512) 463-1788, david.zimmerman@governor.state.tx.us. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendment to §3.9405 is proposed under §391.009(a)(1) of the Local Government Code, which provides the Office of the Governor with the authority to adopt rules relating to the operation and oversight of a COG.

The amended rule implements §391.012 of the Local Government Code, which addresses state financial assistance to COGS.

§3.9405. General Regulations.

(a) The Office of the Governor will recognize one COG organized under Chapter 391, Local Government Code, in each state planning region or sub-region. Only the COG recognized by the Office of the Governor will be eligible for a state planning assistance grant.

[~~(b) All applications from COGs for financial assistance programs covered by the Texas Review and Comment System shall be submitted to the Office of the Governor's State Grants Team for review and comment prior to the submission to any federal, state, or other agency.~~]

(b) [~~(c)~~] Funding under the state planning assistance grant program will be based on member counties and incorporated municipalities as of September 1 for the fiscal year in which funds are being sought. The population of member cities in nonmember counties will be included in computing the amount of state grant eligibility. The population of member cities in nonmember counties shall be determined using the most recent population estimates produced by the Texas State Data Center.

(c) [~~(d)~~] State aid can be expended for any legal activity of a COG as defined in §391.005, Local Government Code. State funds may be utilized as local matching funds for any other state or federal program approved by the governing body of the COG. In no case may state aid be used to pay entertainment expenses or other prohibited costs.

(d) [~~(e)~~] COGs may apply for state planning assistance grant funds in accordance with application schedules developed by CJD.

(e) [~~(f)~~] A COG applying for state planning assistance grant funds must have funds available annually from sources other than the state or federal governments equal to or greater than one-half of the state planning assistance grant funds for which the COG applies. The applicant may count local cash funds which will be collected during the applicant's entire fiscal year toward meeting the requirement of this subsection. Local funds carried forward from a previous fiscal year, above the amount that was equal to one-half of the state planning assistance grant funds for which the commission applied, may be counted in subsequent fiscal years as funds available from sources other than the state or federal government.

(f) [~~(g)~~] The nepotism provisions of Chapter 573, Government Code, apply to a COG.

(g) [~~(h)~~] An employee of a COG is subject to the rules regarding lobbying activities contained in Chapter 556, Government Code, when using state-appropriated funds.

(h) [~~(i)~~] A COG must comply with all applicable federal, state, and local statutes, rules, regulations and guidelines.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2011.

TRD-201100304
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-0181

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CHAPTER 5. BUDGET AND PLANNING OFFICE

The Office of the Governor (OOG) proposes the repeal of Title 1, Part 1, Chapter 5, Subchapter B (State and Local Review of Federal and State Assistance Applications), which includes §§5.191 - 5.196, 5.211 - 5.217, 5.231 - 5.236, 5.251 - 5.253, and 5.271; Subchapter C (Energy Conservation Design Standards), which includes §§5.301 - 5.303; and Subchapter D (Loan Program for Energy Retrofits), which includes §5.401.

The repeal of Subchapter B, which relates to the Texas Review and Comment System (TRACS), is proposed because TRACS is no longer necessary or efficient in light of current advancements in technology. TRACS was created in response to Executive Order 12372 signed by President Reagan in 1982. As originally intended, TRACS was designed to facilitate the sharing of information related to grant funding and other activities requiring coordination and input between federal, state, and local governments. However, email and the Internet have provided communication tools for disseminating information quickly and efficiently, making TRACS an unnecessary layer of administration that has been made obsolete given advancements in technology.

The repeal of Subchapters C and D is proposed because the State Energy Conservation Office (SECO) is no longer part of the OOG. The SECO, which was originally established in the OOG as the Energy Management Center, was transferred to the General Services Commission and then to the Comptroller of Public Accounts. The Comptroller subsequently adopted rules regarding the subject matter of the rules contained in Subchapters C and D. The Comptroller's rules supersede the rules contained in Subchapters C and D; therefore, the rules contained in Subchapters C and D are no longer necessary.

Brandy Marty, Director of Budget, Planning and Policy for the OOG, has determined that for the first five-year period following the repeal of these rules: (1) there will be no fiscal implications for state or local government as a result of repealing these rules; and (2) the public benefit anticipated as a result of repealing these rules will be more efficient processes and procedures. There will be no anticipated economic cost to persons or businesses resulting from the repeal of these rules.

Comments on the proposed repeals may be submitted to David Zimmerman, Assistant General Counsel, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, (512) 463-1788, david.zimmerman@governor.state.tx.us. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER B. STATE AND LOCAL REVIEW OF FEDERAL AND STATE ASSISTANCE APPLICATIONS

DIVISION 1. INTRODUCTION AND GENERAL PROVISIONS OF TEXAS REVIEW AND COMMENT SYSTEM

1 TAC §§5.191 - 5.196

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Governor or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of §§5.191 - 5.196 is proposed under §2001.004, Government Code, which provides a state agency with the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other statutes, articles, or codes are affected by the repeal of these rules.

§5.191. Introduction and Purpose.

§5.192. Applicability.

§5.193. Goals.

§5.194. Definitions.

§5.195. Program Coverage.

§5.196. State Plan Simplification, Substitution, or Consolidation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2011.

TRD-201100293
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-0181

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DIVISION 2. RESPONSIBILITIES OF REVIEW PARTICIPANTS

1 TAC §§5.211 - 5.217

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Governor or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of §§5.211 - 5.217 is proposed under §2001.004, Government Code, which provides a state agency with the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other statutes, articles, or codes are affected by the repeal of these rules.

§5.211. State Single Point of Contact Responsibilities.

§5.212. Regional Review Agency Responsibilities.

§5.213. Conflict of Interest.

§5.214. Use of Other Public Bodies in the Review Process.

§5.215. Sharing of Application Information Among Review Agencies.

§5.216. State Agency Responsibilities.

§5.217. Applicant Responsibilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2011.

TRD-201100294
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-0181

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DIVISION 3. REVIEW PROCEDURES

1 TAC §§5.231 - 5.236

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Governor or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of §§5.231 - 5.236 is proposed under §2001.004, Government Code, which provides a state agency with the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other statutes, articles, or codes are affected by the repeal of these rules.

§5.231. Review Procedures.

§5.232. Review of Projects with Mandated Public Participation.

§5.233. Notification of Intent.

§5.234. Determining Eligibility for Review.

§5.235. Project Review Criteria.

§5.236. Review Schedule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2011.

TRD-201100295
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-0181

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DIVISION 4. ACCOMMODATION OF REVIEW COMMENTS

1 TAC §§5.251 - 5.253

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Governor or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of §§5.251 - 5.253 is proposed under §2001.004, Government Code, which provides a state agency with the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other statutes, articles, or codes are affected by the repeal of these rules.

§5.251. Federal Accommodation of Review Comments.

§5.252. State Accommodation of Local Review Comments.

§5.253. Right of a Dissenting Political Subdivision To Request Accommodation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2011.

TRD-201100296
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-0181

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DIVISION 5. TRANSITION SCHEDULE

1 TAC §5.271

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the Office of the Governor or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of §5.271 is proposed under §2001.004, Government Code, which provides a state agency with the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other statutes, articles, or codes are affected by the repeal of this rule.

§5.271. Transition from OMB Circular A-95 to TRACS.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2011.

TRD-201100297

David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-0181

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SUBCHAPTER C. ENERGY CONSERVATION DESIGN STANDARDS

1 TAC §§5.301 - 5.303

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Governor or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of §§5.301 - 5.303 is proposed under §2001.004, Government Code, which provides a state agency with the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other statutes, articles, or codes are affected by the repeal of these rules.

§5.301. Energy Conservation Design Standard for New State Buildings.

§5.302. Energy Conservation Design Standard for New Residential State Buildings.

§5.303. Energy Conservation Design Standard for Major Renovation Projects.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2011.

TRD-201100299
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-0181

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SUBCHAPTER D. LOAN PROGRAM FOR ENERGY RETROFITS

1 TAC §5.401

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the Office of the Governor or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of §5.401 is proposed under §2001.004, Government Code, which provides a state agency with the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other statutes, articles, or codes are affected by the repeal of this rule.

§5.401. Texas LoanSTAR (Save Taxes and Resources) Program for Public Sector Institutions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2011.

TRD-201100300
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-0181

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8064

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8064, concerning Reimbursement Adjustment for Hospitals Providing Inpatient Services to Supplemental Security Income (SSI) and SSI-Related Clients. The proposed amendment updates rule references that are no longer correct.

Background and Justification

The proposed amendment updates obsolete references to §355.8063, Reimbursement Methodology for Inpatient Hospital Services, which was repealed in the June 23, 2010, issue of the *Texas Register.* The references will be updated to refer to the new rules at §355.8052, which governs inpatient hospital reimbursement, and §355.8054, which governs children's hospital reimbursement. Additionally, the proposed amendment clarifies that the discount related to SSI and SSI-related clients in certain areas of the state is applied to the hospital reimbursement amount and removes the word "rates" to avoid any confusion in the application of the reduction.

Section-by-Section Summary

Proposed subsection (a) removes the reference to repealed rule §355.8063 and adds the reference to the new rule at §355.8052.

Proposed subsection (b) removes the word "rates" to clarify that the discount may be applied to the reimbursement of all hospitals for inpatient services provided to SSI and SSI-related clients in certain service areas.

Proposed subsection (c) removes the reference to repealed rule §355.8063 and adds the reference to the new rule at §355.8054.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the five-year period the proposed rule is in effect there will be no fiscal impact to state government as a result of the amendment. The proposed amend-

ment will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mrs. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule is in effect, the public will benefit from the adoption of the amendment. The anticipated public benefit, as a result of enforcing the amended rule, will be that the rule text includes the correct rule references.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Chris Dockal, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983; or by e-mail at Chris.Dockal@HHSC.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed rule amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8064. Reimbursement Adjustment for Hospitals Providing Inpatient Services to SSI and SSI-Related Clients.

(a) Effective September 1, 2006, reimbursement to hospitals in Bexar, Dallas, El Paso, Harris, Lubbock, Nueces, Tarrant and Travis service areas for inpatient services will be determined according to the methodology described in §355.8052 [~~§355.8063~~] of this title (relating to Inpatient Hospital Reimbursement [~~Reimbursement Methodology for Inpatient Hospital Services~~]) and shall be reduced by the percent discount in subsection (b) of this section. The percent discounts are necessary to achieve budgetary savings as permitted under §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

(b) Up to an eight percent discount may be applied to the reimbursement [~~rates~~] of all hospitals for inpatient services provided to Supplemental Security Income (SSI) and SSI-related clients in service areas as determined by the Health and Human Services Commission (HHSC).

(c) In-state children's hospitals that are cost reimbursed in accordance with §355.8054 [~~§355.8063~~] of this title (relating to Children's Hospital Reimbursement Methodology [~~Reimbursement Methodology for Inpatient Hospital Services~~]) are exempt from the percent discount in subsection (b) of this section.

(d) Definitions.

(1) Bexar Service Area means Atascosa, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson counties.

(2) Dallas Service Area means Collin, Dallas, Ellis, Hunt, Kaufman, Navarro and Rockwall counties.

(3) El Paso Service Area means El Paso County.

(4) Harris Service Area means Brazoria, Fort Bend, Galveston, Harris, Montgomery and Waller counties.

(5) Lubbock Service Area means Crosby, Floyd, Garza, Hale, Hockley, Lamb, Lubbock, Lynn and Terry counties.

(6) Nueces Service Area means Aransas, Bee, Calhoun, Jim Wells, Kleberg, Nueces, Refugio, San Patricio and Victoria counties.

(7) Tarrant Service Area means Denton, Hood, Johnson, Parker, Tarrant and Wise counties.

(8) Travis Service Area means Bastrop, Burnet, Caldwell, Hays, Lee, Travis and Williamson counties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2011.

TRD-201100288
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER J. GO TEXAN WILDLIFE PROGRAM

4 TAC §§17.600 - 17.610

The Texas Department of Agriculture (department) proposes new Chapter 17, Subchapter J, §§17.600 - 17.610, concerning the Go Texan Wildlife Program. On June 26, 2009, the department announced its Wildlife Initiative, to promote businesses and organizations that are based around Texas' diverse and extensive wildlife resources. In response to widespread approval of the program by businesses and constituents, and to further the department's mandates to promote Texas agriculture and rural economic development, the department is proposing new Chapter 17, Subchapter J. The new sections are proposed to formalize the department's Wildlife Initiative and establish a Go Texan Wildlife Program (program). The new sections provide definitions, program qualifications, application procedures, and standards for certification under the program.

Elizabeth Hadley, assistant commissioner for marketing and promotion, has determined that for the first five years the new sections are in effect, there will be an increase in revenue for state government as a result of the anticipated increase in fees to be collected by the program. For the first year, Ms. Hadley has determined there will be an estimated 75 applicants who will submit applications for the program and pay a $25 fee. Accordingly, estimated first year revenue resulting from the program will be $1,875. For the second year, there will be an estimated 100 new applicants or renewing program members who will be required to pay a $25 fee. Accordingly, estimated second year revenue resulting from the program will be $2,500. For the third year, there will be an estimated 125 new applicants or renewing program members who will be required to pay a $25 fee. Accordingly, estimated third year revenue resulting from the program will be $3,125. For the fourth year, there will be an estimated 150 new applicants or renewing members who will be required to pay a $25 fee. Accordingly, estimated fourth year revenue resulting from the program will be $3,750. For the fifth year, there will be an estimated 175 new applicants or renewing program members who will be required to pay a $25 fee. Accordingly, estimated fifth year revenue resulting from the program will be $4,375. There will be no fiscal implications to local government as a result of enforcing or administering the proposed new sections.

Ms. Hadley has also determined that for each year of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be to promote business and organizations that are based around Texas' diverse and extensive wildlife resources. There will be a cost to individuals, micro-businesses and small businesses in the form of a $25 program fee. However, program membership is voluntary, and non-members are not required to pay any fees.

Comments on the proposal may be submitted to Elizabeth Hadley, Assistant Commissioner for Marketing and Promotion, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

Chapter 17, Subchapter J, §§17.600 - 17.610 are proposed under the Texas Agriculture Code, §12.0175, which provides the department the authority to establish programs by rule to promote and market agricultural products and other products grown, processed, or produced in the state, and charge a membership fee, as provided by department rule, for each participant in a program, and adopt rules to administer a program established under §12.0175. Additionally, the new sections are proposed pursuant to §12.027 of the Texas Agriculture Code, which provides the department with authority to establish rural economic development programs.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§17.600. Authority.

Pursuant to §12.0175 and §12.027 of the Texas Agriculture Code, the department establishes the Go Texan Wildlife Program.

§17.601. Purpose.

(a) The Go Texan Wildlife Program promotes business and organizations that are based around Texas' diverse and extensive wildlife resources.

(b) Nothing in this subchapter shall affect any statute or rule pertaining to the administration, conservation, governance, or regulation of this state's wildlife or wildlife resources, or have any effect on the construction or interpretation of any other statute or rule.

§17.602. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--An eligible entity which is preparing to submit or has submitted an application for the Go Texan Wildlife Program.

(2) Application--A written request for certification under the Go Texan Wildlife Program in the format required by the department.

(3) Department--The Texas Department of Agriculture.

(4) Eligible Entity--A business or organization, including, without limitation, a corporation, limited liability company, limited liability partnership, limited partnership, non-profit association, non-profit corporation, non-profit organization, partnership, or sole proprietorship that has its principal place of business in Texas and that is based around Texas' diverse and extensive wildlife resources.

(5) Embryo--The fertilized egg of an animal.

(6) Fishing--The act or sport of capturing a fish.

(7) Genetics--The business, engineering, and science of cloning, creating, harvesting, implanting, manipulating, marketing, producing, researching, or selling animal eggs, embryos, genes, genetic characteristics, or semen.

(8) Hunting--The capturing or harvesting of wildlife.

(9) Product--Wildlife or their byproducts; fish or their byproducts; a commodity, good, or piece of merchandise utilized for hunting, fishing, or wildlife recreation that has been produced or had value added in Texas; or any other type of commodity, good, or merchandise consisting of, related to, or utilized in connection with wildlife, including, without limitation, an egg, embryo, gene, and semen.

(10) Program--The Go Texan Wildlife Program.

(11) Staff--Employees of the department assigned to the Go Texan Wildlife Program.

(12) Value added--Enhancement to a product before it is provided to customers or end-users.

(13) Wildlife--Any non-domesticated animal or vegetation.

§17.603. Qualification for the Program.

(a) An eligible entity may qualify for certification under the program as:

(1) a product business or organization;

(2) a service business or organization; or

(3) a promoter.

(b) To obtain certification under the program as a product business or organization, an eligible entity must have or produce a product (hereinafter referred to in this subchapter as the "product category").

(c) To obtain certification under the program as a service business or organization, an eligible entity must provide a service in Texas that is based around Texas wildlife (hereinafter referred to in this subchapter as the "service category").

(d) To obtain certification under the program as a promoter, the applicant must promote a wildlife product or service at one or more locations in Texas, including, without limitation, as a tradeshow or wholesaler.

§17.604. Application.

An applicant seeking certification must submit a completed application in the form prescribed by the department and include:

(1) a description of applicant's product(s), service(s), or promotional activity; and

(2) the location of applicant's principal place of business.

§17.605. Standards for Certification under the Product Category.

To obtain certification under the product category, the applicant must be:

(1) a breeder of wildlife; or

(2) a businesses or organization engaged in the field of wildlife genetics; or

(3) a producer, supplier, retailer or wholesaler of wildlife or their byproducts; or

(4) a producer, supplier, retailer or wholesaler of fish or their byproducts; or

(5) a manufacturer or producer of a commodity, good, or piece of merchandise utilized for hunting, fishing, or wildlife recreation that has been manufactured in, produced in, or value added in Texas; or

(6) a manufacturer or producer of any type of commodities, goods, or merchandise consisting of, related to, or utilized in connection with wildlife, including, without limitation, eggs, embryos, genes, or semen.

§17.606. Standards for Certification under the Service Category.

To obtain certification under the service category, the applicant must possess all applicable licenses and permits, and be:

(1) a landowner that provides leases for hunting or fishing; or

(2) a fishing, hunting, or wildlife guide; or

(3) a hunting ranch, destination or facility; or

(4) a fishing camp, destination or facility; or

(5) a wildlife or animal farm, destination or facility; or

(6) a farm or ranch that provides wildlife recreational opportunities to the general public; or

(7) a fishery; or

(8) a wildlife park, destination or facility; or

(9) a service provider in the area of wildlife genetics; or

(10) a taxidermist or wildlife processing facility.

§17.607. Standards for Certification under the Promoter Category.

To obtain certification under this category, the applicant must possess all licenses and permits, and be an eligible entity that promotes a wildlife product or service at one or more locations in Texas.

§17.608. Effect of Application.

By filing an application and seeking certification, the applicant verifies the following information:

(1) applicant has all required licenses and permits;

(2) the application (along with all attachments) is true and correct;

(3) for application made under the product category, applicant's products are manufactured in, produced in, or have value added in Texas; or

(4) alternatively, for application made under the product category, applicant's products are produced in Texas, but may be processed out of Texas because facilities for processing are not reasonably available in Texas; or

(5) for application made under the service category, applicant's services are provided in Texas; or

(6) for a promoter, applicant is an eligible entity that promotes a wildlife product or service at one or more locations in Texas.

§17.609. Selection.

(a) Each applicant must submit a completed application to the Texas Department of Agriculture, Go Texan Wildlife Program, P.O. Box 12847, Austin, Texas 78711. Applications are available online at www.gotexan.org or may be requested from the department.

(b) Each applicant must pay an application fee of $25.00 and an annual program fee of $25.00.

(c) Staff will review applications for eligibility and completeness.

(d) An application that has been withdrawn by the applicant or declined by the department, may be resubmitted with payment of the full application fee.

(e) The department will notify the applicant of approval or denial of the application.

§17.610. Go Texan Certification Mark.

Upon execution of a licensing agreement in the form prescribed by the department, an applicant approved for certification under the program shall be allowed to use the Go Texan certification mark as a certification that its business meets the characteristics, requirements and standards set forth in this subchapter and that its business is based upon Texas wildlife.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100285

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

SUBCHAPTER I. FORMS

10 TAC §80.100

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes to amend 10 Texas Administrative Code §80.100, relating to the regulation of the manufactured housing program. The rule is revised for clarification purposes; to update licensing applications to include suggestions recommended during the Sunset Review Licensing Audit and the internal audit conducted; and to add the meaning of "Lease Purchase" to the disclosure statement as suggested during a public comment period at a Manufactured Housing Board meeting.

Section 80.100(a): Added new form numbers to the List of Forms identified as §80.100(a)(47), Field Verification Inspection Request Form and §80.100(a)(48), Adding and Deleting a Related Person to a License Record form.

Figure: 10 TAC §80.100(b)(1): Revised the Application for Manufacturer's License for clarification, added fields for applicant to provide their email and Website address, added a field for applicant to provide the social security number of persons that directly or indirectly participate in management or policy decisions, included statement that social security numbers are now required for processing applications, updated criminal background section, and added question asking if applicant is in arrears of any child support as required by the Family Code.

Figure: 10 TAC §80.100(b)(2): Revised the Application for Retailer, Broker, Installer and/or Rebuilder's License for clarification, added fields for applicant to provide their email and Website address, added a field for applicant to provide the social security number of persons that directly or indirectly participate in management or policy decisions, included statement that social security numbers are now required for processing applications, updated criminal background section, and added question asking if applicant is in arrears of any child support as required by the Family Code.

Figure: 10 TAC §80.100(b)(3): Revised the Application for Retailer with Branch Locations License for clarification, added fields for applicant to provide their email and Website address, added a field for applicant to provide the social security number of persons that directly or indirectly participate in management or policy decisions, included statement that social security numbers are now required for processing applications, updated criminal background section, and added question asking if applicant is in arrears of any child support as required by the Family Code.

Figure: 10 TAC §80.100(b)(4): Revised the Application for Salesperson's License for clarification, included statement that social security numbers are now required for processing applications, updated criminal background section, and added question asking if applicant is in arrears of any child support as required by the Family Code.

Figure: 10 TAC §80.100(b)(5): Revised the Continuous Manufactured Housing Licensing Surety Bond form for clarification.

Figure: 10 TAC §80.100(b)(8): Revised the Consumer Disclosure Statement form to include the meaning of "Lease Purchase."

Figure: 10 TAC §80.100(b)(16): Revised the Notice of Installation (Form T) by reformatting information for clarification.

Figure: 10 TAC §80.100(b)(19): Revised the Application for Statement of Ownership and Location for clarification.

Figure: 10 TAC §80.100(b)(25): Revised the Release or Foreclosure of Lien (Form B) form for clarification.

Figure: 10 TAC §80.100(b)(35): Revised the Application for License Renewal (other than a salesperson) for clarification, added fields for applicant to provide their email and Website address, added a field for applicant to provide the social security number of persons that directly or indirectly participate in management or policy decisions, included statement that social security numbers are now required for processing applications, updated criminal background section, and added question asking if applicant is in arrears of any child support as required by the Family Code.

Figure: 10 TAC §80.100(b)(38): Revised the Notice of Installation (Form T) for Provisional Installer's License by reformatting information for clarification.

Figure: 10 TAC §80.100(b)(42): Revised the Application for Salesperson's License Renewal for clarification, included statement that social security numbers are now required for processing applications, updated criminal background section, and added question asking if applicant is in arrears of any child support as required by the Family Code.

Figure: 10 TAC §80.100(b)(47): Added new form to request a field verification inspection.

Figure: 10 TAC §80.100(b)(48): Added new form for adding or deleting a related person to a license record.

Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this section. There will be no effect on small or micro-businesses because of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rule.

Mr. Garcia also has determined that for each year of the first five years that the proposed rule is in effect the public benefit as a result of enforcing the amendments will be to provide clarification of procedures and to improve customer service by providing information necessary to comply with the Department's requirements.

Mr. Garcia has also determined that for each year of the first five years the proposed rule is in effect there should be no adverse effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the APA, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by email at mhproposedrulecomments@tdhca.state.tx.us. The deadline for comments is no later than 30 days from the date that this proposed rule is published in the *Texas Register.*

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.

§80.100. List of Forms.

(a) The following list is in numerical order with the forms located in subsection (b) of this section.

(1) - (46) (No change.)

(47) Field Verification Inspection Request Form.

(48) Adding or Deleting a Related Person to a License Record.

(b) Forms.

(1) Application for Manufacturer's License.
Figure: 10 TAC §80.100(b)(1)

(2) Application for Retailer, Broker, Installer and/or Rebuilder's License.
Figure: 10 TAC §80.100(b)(2)

(3) Application for Retailer with Branch Locations License.
Figure: 10 TAC §80.100(b)(3)

(4) Application for Salesperson's License.
Figure: 10 TAC §80.100(b)(4)

(5) Licensing Surety Bond.
Figure: 10 TAC §80.100(b)(5)

(6) - (7) (No change.)

(8) Consumer Disclosure Statement.
Figure: 10 TAC §80.100(b)(8)

(9) - (15) (No change.)

(16) Notice of Installation (Form T).
Figure: 10 TAC §80.100(b)(16)

(17) - (18) (No change.)

(19) Application for Statement of Ownership and Location.
Figure: 10 TAC §80.100(b)(19)

(20) - (24) (No change.)

(25) Release or Foreclosure of Lien (Form B).
Figure: 10 TAC §80.100(b)(25)

(26) - (34) (No change.)

(35) Application for License Renewal (other than a salesperson).
Figure: 10 TAC §80.100(b)(35)

(36) - (37) (No change.)

(38) Notice of Installation (Form T) for Provisional Installer's License.
Figure: 10 TAC §80.100(b)(38)

(39) - (41) (No change.)

(42) Application for Salesperson's License Renewal.
Figure: 10 TAC §80.100(b)(42)

(43) - (46) (No change.)

(47) Field Verification Inspection Request Form.
Figure: 10 TAC §80.100(b)(47)

(48) Adding or Deleting a Related Person to a License Record.
Figure: 10 TAC §80.100(b)(48)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100284
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 475-2206

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.305

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.305, "Lotto Texas" On-Line Game Rule. The purpose of the proposed amendments is to transition from the "annuitized payment" option to the "cash value" option as the default jackpot payment option at all retailer sales terminals and player self-service sales terminals. This transition will be synchronized with the transition from old retailer and self-service terminals to new retailer and self-service terminals.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Further-

more, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Michael Anger, Director of Lottery Operations, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated will be that the default jackpot payment option will be the Cash Value Option which is consistent with the current selection of "Cash Value Option" made by the majority of players.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Pete Wassdorf, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 2:00 p.m. on Wednesday, February 16, 2011, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The amendments implement Texas Government Code, Chapter 466.

§401.305. "Lotto Texas" On-Line Game Rule.

(a) Lotto Texas. The executive director is authorized to conduct a game known as "Lotto Texas." The executive director may issue further directives for the conduct of Lotto Texas that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to On-Line Game Rules (General)).

(b) Definitions. When used in this rule, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Play--The selection of six different numbers from 1 through 54 for one opportunity to win in Lotto Texas and the purchase of a ticket evidencing that selection.

(2) Playboard--A field of 54 numbers on a playslip for use in selecting numbers for a Lotto Texas play.

(3) Playslip--An optically readable card issued by the commission for use in selecting numbers for one or more Lotto Texas plays.

(4) Roll cycle--A series of drawings that ends when there is a drawing for which one or more tickets are sold that match the six numbers drawn in the drawing. A new roll cycle begins with the next drawing after a drawing for which one or more jackpot tickets are sold that match the six numbers drawn in the drawing.

(c) Plays and tickets

(1) A ticket may be sold only by an on-line retailer and only at the location listed on the retailer's license. A ticket sold by a person other than an on-line retailer is not valid.

(2) The price of a play is $1.

(3) A player may complete up to five playboards on a single playslip.

(4) A player may use a single playslip to purchase the same play(s) for up to 10 consecutive drawings, to begin with the next drawing after the purchase.

(5) A person may select numbers for a play either:

(A) by using a self-service terminal;

(B) by using a playslip to select numbers;

(C) by requesting a retailer to use Quick Pick to select numbers; or

(D) by requesting a retailer to manually enter numbers.

(6) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually is not valid.

(7) An on-line retailer may accept a request to manually enter selections or to make quick-pick selections only if the request is made in person.

(8) The Commission has just entered into a new lottery operations and services contract, an element of which will be the replacement of retailer and self-service terminals. After the new terminals replace the old terminals, the default payment option, where an option is not chosen by the player, will be the cash value option. During the transition period when there are both old terminals and new terminals in use, the payment options will be as shown in the chart below. At the time of making a play, a person may select the option for payment of the cash value or annuitized payments of a share of the jackpot if the play is a winning play. If no selection is made, payment option will be as described in the chart below:
Figure: 16 TAC §401.305(c)(8)

(9) An on-line retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers selected for each play, the number of plays, the draw date(s) for which the plays were purchased, the jackpot payment option, and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock.

(10) A playslip has no monetary value and is not evidence of a play.

(11) The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.

(12) An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(d) Drawings

(1) Lotto Texas drawings shall be held each week on Wednesday and Saturday at 10:12 p.m., central time. The executive director may change the drawing schedule, if necessary.

(2) Six different numbers from 1 through 54 shall be drawn at each Lotto Texas drawing.

(3) Numbers drawn must be certified by the commission in accordance with the commission's drawing procedures.

(4) The numbers selected in a drawing shall be used to determine all winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a commission drawings representative and the independent certified public accountant immediately before each drawing and immediately after each drawing.

(e) Advertised jackpots. For each drawing, the commission shall approve a jackpot amount to be advertised. The advertised amount shall be an amount payable in 25 annual installments. To the extent that advertised amount is based on projected sales, the projections shall be fair and reasonable. The commission may approve an increase in the amount of the jackpot originally advertised for a drawing if the increase is supported by reasonable sales projections.

(f) Prizes

(1) Jackpot prize (first prize).

(A) A person who holds a valid ticket for a play matching (in any order) the six numbers drawn in a drawing is entitled to a share of the jackpot prize (first prize) for the drawing.

(B) The jackpot prize for a drawing is the greater of

(i) 40.47 percent of the proceeds from Lotto Texas ticket sales for all drawings in the roll cycle and any earnings on an investment of all or part of the proceeds from ticket sales, paid in 25 annual installments; or

(ii) The amount advertised in accordance with subsection (e) of this section as the estimated jackpot for the drawing, paid in 25 annual installments.

(C) Except as provided by subparagraph (F) of this paragraph, a person who is entitled to a share of a jackpot prize and who opted for annualized installment payments, [~~did not opt to receive the cash value of the jackpot prize~~] shall receive payment in 25 annual installments.

(D) The first installment payment shall be made upon completion of commission validation procedures. The subsequent 24 installment payments shall be made annually on the 15th day of the month in which the applicable drawing occurred.

(E) The second through 24th installment payments shall be in equal amounts. The first installment payment may be equal to or higher than the subsequent installment payments.

(F) If a person would otherwise receive total installment payments of $2 million or less, the commission shall pay the person, upon completion of all validation procedures, a single payment in the amount of the cash value of those total installment payments. The cash value is the cost on the first business day after the applicable drawing of funding those installment payments.

(G) A person who is entitled to a share of the jackpot and who selected the cash value option, or for whom the cash value option was automatically selected shall receive the greater of the following two amounts:

(i) a share of 40.47 percent of total sales for the roll cycle; or

(ii) the cost on the day after the drawing of funding a share of installment payments under subparagraph (B)(ii) of this paragraph.

(H) A payment under subparagraph (G) of this paragraph shall be made upon completion of commission validation procedures.

(I) Any investment necessary to fund a jackpot prize shall be made on the first business day after a drawing for which one or more tickets were sold that match the six numbers drawn in the drawing.

(J) A claim for a jackpot prize must be presented at the Austin claim center.

(K) If sales proceeds and the Lotto Texas prize reserve fund are not sufficient to pay a jackpot prize, the commission shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, §466.355.

(2) Second prize.

(A) A person who holds a valid ticket for a play matching (in any order) five of the six numbers drawn in a drawing is entitled to a share of the second prize for that drawing.

(B) The second prize consists of 2.23 percent of the proceeds from Lotto Texas ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the second prize for a drawing shall be rounded to the closest whole dollar amount. An amount of fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the second prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the second prize for the next drawing.

(3) Third prize.

(A) A person who holds a valid ticket for a play matching (in any order) four of the six numbers drawn in a drawing is entitled to a share of the third prize for that drawing.

(B) The third prize consists of 3.28 percent of the proceeds from ticket sales for the drawing and any amounts carried forward under subparagraphs (C) and (D) of this paragraph.

(C) A payment made to a person for a share of the third prize for a drawing shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the third prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the third prize for the next drawing.

(4) Fourth prize.

(A) A person who holds a valid ticket for a play matching (in any order) three of the six numbers drawn in a drawing is entitled to a guaranteed prize of $3.

(B) If 4.02 of proceeds from Lotto Texas ticket sales and the Lotto Texas prize reserve fund are not sufficient to pay all fourth prizes for a draw, the commission shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, §466.355.

(C) To the extent that the total amount of fourth prizes for a drawing is less than 4.02 percent of the proceeds from ticket sales of for the drawing, the difference shall be carried forward to fund future fourth prize payments.

(5) A person may win only one prize per play per drawing. A player who holds a valid ticket for a winning play is entitled to the highest prize for that play.

(6) A share of a prize is determined by dividing the prize by the number of winning plays for that prize.

(7) Jackpot payment amounts are calculated on the first business day after the applicable drawing. A claimant is not entitled to interest or other earnings on those amounts, regardless of when the claim is actually presented and regardless of the dates on which payments are made.

(8) There will be no allocations from Lotto Texas ticket sales to the Lotto Texas prize reserve fund.

(g) Jackpot information on Commission website

(1) After the commission has approved an advertised estimated jackpot under subsection (e) of this section, the commission shall post the following information on the agency website:

(A) the amount of ticket sales, if any, for previous drawings in the roll cycle;

(B) the amount of projected ticket sales for the upcoming drawing;

(C) investment information used to determine the advertised estimated jackpot; and

(D) other information used to determine the advertised estimated jackpot.

(2) After the commission determines that one or more tickets have been sold that match the six numbers drawn in a drawing, the commission shall post on the agency website information used to calculate the jackpot prize.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 344-5275

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16 TAC §401.315

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.315, "Mega Millions" On-Line Game Rule. The purposes of the proposed amendments are to transition from the "annuitized payment" option to the "cash value" option as the default jackpot payment option at all retailer sales terminals and player self-service sales terminals. This transition will be synchronized with the transition of equipment from old retailer and self-service terminals to new retailer and self-service terminals. The further purposes are to reflect in the Texas Lottery Commission Mega Millions rule, changes made to the Mega Millions Group rule to identify Megaplier as an add-on game; identify Megaplier special promotions, and to describe how the promotions will affect the different prize tiers; and to identify how the Megaplier prizes will be affected if the Mega Millions cap is reached and the prizes become pari-mutuel prizes.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Michael Anger, Director of Lottery Operations, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated will be that the default jackpot payment option will be the Cash Value Option which is consistent with the current selection of "Cash Value Option" made by the majority of players. Additionally, the public benefit anticipated from changes to the Megaplier promotions language is to further clarify the prize amount calculation methodology for the Megaplier during any promotional periods and to provide added transparency to the public related to the application of liability cap rules of the Mega Millions game associated with Megaplier prizes.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Pete Wassdorf, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 2:00 p.m. on Wednesday, February 16, 2011, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The amendments implement Texas Government Code, Chapter 466.

§401.315. "Mega Millions" On-Line Game Rule.

(a) Mega Millions. A Texas Lottery on-line game to be known as "Mega Millions" is authorized to be conducted by the executive director under the following rules and under such further instructions and directives as the executive director may issue in furtherance thereof, and pursuant to the requirements of the multijurisdictional [~~multijurisdiction~~] agreement among [~~between~~] all participating party lotteries (the Mega Millions Group). Consistent with this rule, the executive director is specifically authorized to issue all such further instructions and directives as the executive director may deem necessary or prudent, to implement these rules and to comply with the multijurisdictional games. If a conflict arises between this section and §401.304 of this title (relating to On-Line Game Rules (General)), this section shall have precedence. The purpose of the Mega Millions game is the generation of revenue for party lotteries through the operation of a specially-designed multijurisdiction lottery game that will award prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings.

(b) Definitions. In addition to the definitions provided in §401.301 of this title (relating to General Definitions), and unless the context in this section otherwise requires, the following definitions apply.

(1) Advertised jackpot--The estimated annuitized Grand/Jackpot prize [~~grand/jackpot~~] amount the Mega Millions directors establish for each Mega Millions drawing. The advertised estimated annuitized grand/jackpot is an amount that would be paid in 26 annual installments.

(2) Annual payment option--At the time of ticket purchase, a player may select the option for payment of the cash value or annuitized payments of a share of the Grand/Jackpot prize if the play is a winning play.[~~The option to receive annual installment payments that can be selected by the player at the time of ticket purchase. This option is chosen automatically for the player if no payment option is selected by the player at time of ticket purchase.~~] The annual payment option is to be paid in 26 annual payments, in the event the player has a valid winning grand/jackpot ticket and consistent with the provisions of this [~~the~~] rule. The term "annual payment option" is synonymous with the terms "annual option", "annuitized option", and "annuity option".

(3) Cash value option--At the time of purchasing a ticket, a player may select the option for payment of the cash value or annuitized payments of a share of the jackpot if the play is a winning play. A cash value option will be paid in a single payment of the player's share of the Grand/Jackpot prize amount, in the event the player has a valid winning grand/jackpot ticket and consistent with the provisions of this rule. [~~An election a player must make at the time the player purchases a ticket in order to be paid a single payment of the player's share of the grand/jackpot amount, in the event the player has a valid winning grand/jackpot ticket and consistent with the provisions of the rule.~~] The term "cash value option" is synonymous with the terms "cash option" and "net present value option".

(4) If no payment option is selected--The Commission has just entered into a new lottery operations and services contract, an element of which will be the replacement of retailer and self-service terminals. After the new terminals replace the old terminals, the default payment option, where an option is not chosen by the player, will be the cash value option. During the transition period when there are both old terminals and new terminals in use, the payment options will be as shown in the chart below. At the time of making a play, a player may select the option for payment of the cash value or annuitized payments of a share of the Grand/Jackpot prize if the play is a winning play. If no selection is made, payment option will be as described in the chart below.
Figure: 16 TAC §401.315(b)(4)

(5) [~~(4)~~] Executive director--The executive director of the Texas Lottery Commission. The term "executive director" is synonymous with the term "director".

(6) [~~(5)~~] Grand/jackpot prize amount--The amount awarded for matching, for one play, all of the numbers drawn from both fields. If more than one player from all participating lottery jurisdictions has selected all of the numbers drawn, the grand/jackpot prize amount shall be divided among those players. The amount actually paid will depend on the payment option elected at the time of purchase, consistent with the provisions of the rule.

(7) [~~(6)~~] Multijurisdictional [~~Multijurisdiction~~] agreement--The amended and restated multijurisdiction agreement regarding the Mega Millions game, or any subsequent amended agreement, signed by the party lotteries and including the finance and operations procedures for Mega Millions, and on-line drawing procedures for Mega Millions.

(8) [~~(7)~~] Megaplier feature--A Mega Millions game feature, known as "Megaplier", by which a player, for an additional wager of $1 per play, can increase the guaranteed prize amount or pari-mutuel prize amount, as applicable, for the third through ninth tier prizes, depending on the multiplier number that is drawn prior to the Mega Millions drawing. There is no multiplier for the grand/jackpot prize or for the second tier prize (the second tier prize is a guaranteed $1,000,000 prize).

(9) [~~(8)~~] Number--Any play integer from one through 56.

(10) [~~(9)~~] Party lotteries--One or more of the lotteries established and operated pursuant to the laws of the jurisdictions participating in Mega Millions or any other lottery which becomes a signatory to the Mega Millions agreement.

(11) [~~(10)~~] Play--The six numbers selected on each playboard and printed on the ticket. Five numbers are selected from the first field of 56 numbers and one number is selected from the second field of 46 numbers.

(12) [~~(11)~~] Playboard--Two fields, the first field of 56 numbers and the second field of 46 numbers, each found on the playslip.

(13) [~~(12)~~] Playslip--An optically readable card issued by the commission used by players of Mega Millions to select plays and to elect to participate in the multiplier feature. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(c) Price of ticket. The price of each Mega Millions play shall be $1. Multiple draws are available for consecutive draws beginning with the current draw. From time to time, the executive director may authorize the sale of Mega Millions tickets at a discount for promotional purposes. For an additional $1 per play, a player may purchase the Megaplier feature.

(d) Play for Mega Millions.

(1) Type of play. A Mega Millions player must select five numbers from the first field of numbers from 1 through 56 and an additional one number from the second field of numbers from 1 through 46 in each play or allow number selection by a random number generator operated by the terminal, referred to as Quick Pick.

(2) Method of play. The player may use playslips to make number selections. The terminal will read the playslip and issue ticket(s) with corresponding plays. If a playslip is not available or if a player is unable to complete a playslip, the retailer may enter the selected numbers via the keyboard. However, the retailer shall not accept telephone or mail-in requests to issue a ticket. The use of mechanical, electronic, computer generated or any other non-manual method of marking a playslip is prohibited. A player may leave all play selections to a random number generator operated by the terminal, referred to as Quick Pick.

(3) One prize per play. The holder of a winning ticket may win only one prize per play in connection with the winning numbers drawn and shall be entitled only to the highest prize category won by those numbers.

(e) Megaplier feature play.

(1) Type of play. A Mega Millions player may elect to participate in the "Megaplier" feature by paying an additional $1 per play at the time of his/her Mega Millions ticket purchase.

(2) Megaplier drawing. A random drawing will occur before every Mega Millions drawing to determine one multiplier number for that drawing. The multiplier number that will be selected will be either, a 2, 3, or 4. The multiplier number drawn will be used to multiply the value of the prizes for the third through ninth tiers. In the event the multiplier drawing does not occur prior to the Mega Millions drawing, the multiplier number will be a 4.

(3) Multiplier number frequency. The one multiplier number will be selected from a field of numbers according to the following relative frequencies:
Figure: 16 TAC §401.315(e)(3) (No change.)

(4) Application of multiplier number.

(A) Third through ninth tier. The multiplier number selected is the number that is used to increase the prize amount, for the third through the ninth tier. A third through the ninth tier prize winner who chose to participate in the Megaplier feature by paying an additional $1 per play at the time of the player's Mega Millions ticket purchase is paid a prize in the amount of the guaranteed prize amount or the pari-mutuel prize amount, as applicable, multiplied by the multiplier number for that drawing.

(B) Second tier prize. The second tier prize will always be a $1,000,000 prize, if the player selects and pays for the Megaplier feature (i.e., the multiplier number drawn does not apply to, affect or alter the second tier prize).

(C) Grand/Jackpot prize. The Megaplier feature does not apply to the grand/jackpot prize.

(5) Special Megaplier Promotions. The Mega Millions Group may periodically agree to change one or more of the Megaplier multiplier number for tiers 3 through 9, numbers in order to conduct special Megaplier promotions during specified time periods. The relative frequency of the Megaplier numbers may be changed and/or additional numbers may be added to the matrix at the discretion of the Mega Millions Group, [~~executive director~~] from time to time for promotional purposes. In such promotions the Mega Millions Group may also decide to increase the 2nd tier prize. The Megaplier number will not be applied to the 2nd tier base prize, rather the 2nd tier prize may be increased to a fixed dollar amount to be determined by the group, for any player purchasing the Megaplier Add-on feature during the special promotion. Such special promotion, matrix changes, and 2nd tier prize amounts [~~change~~] shall be announced by public notice. Each participating state [~~The executive director~~] will announce the promotion according to the laws or customs of the participating state. [~~by publication on the agency web site and any other means deemed appropriate to inform the public.~~]

(f) Prizes for Mega Millions.

(1) Prize amounts. The prize amounts, for each drawing, paid to each Mega Millions winner who selects matching combinations of numbers, with the exception of the grand/jackpot prize, are guaranteed prizes or pari-mutuel prize amounts in accordance with paragraph (3)(H) of this subsection.

(2) Prize fund. The prize fund for Mega Millions prizes is estimated to be 50% of Mega Millions sales, but may be higher or lower based upon the number of winners at each guaranteed prize level, as well as the funding required to be contributed to the starting advertised annuitized guaranteed grand/jackpot of $12 million.

(3) Prize categories.

(A) Matrix of 5/56 and 1/46 with 50 percent estimated prize fund.

Figure: 16 TAC §401.315(f)(3)(A) (No change.)

(B) Grand/jackpot prize payments.

(i) The portion of the prize money allocated from the current Mega Millions prize fund for the grand/jackpot prize, plus any previous portions of prize money allocated to the grand/jackpot prize category in which no matching tickets were sold and money from any other available source pursuant to a guaranteed or estimated first prize amount announcement will be divided equally among all grand/jackpot prize winners in all participating lotteries matching all five of five Mega Millions winning numbers drawn for field 1 and the one Mega Millions number drawn for field 2. Prior to each drawing, the Mega Millions grand/jackpot prize amount that would be paid in 26 annual installments will be advertised. The advertised annuitized grand/jackpot prize amount shall be estimated and established based upon sales and the annuity factor established for the drawing. The annuitized grand/jackpot prize to be awarded for each Mega Millions play matching all five (5) of the five (5) Mega Millions winning numbers draw for field 1 and the one (1) Mega Millions winning number drawn for field two (2) shall be the amount equivalent to the highest whole $1 million annuity that is funded by the amount in that portion of the prize fund allocated to the grand/jackpot prize category. In no event, however, shall the annuitized grand/jackpot prize be less than $12 million.

(ii) If in any Mega Millions drawing there are no Mega Millions plays which qualify for the grand/jackpot prize category, the portion of the prize fund allocated to such grand/jackpot prize category shall remain in the grand/jackpot prize category and be added to the amount allocated for the grand/jackpot prize category in the next consecutive Mega Millions drawing.

(iii) If there are multiple matching tickets sold of the Mega Millions grand/jackpot prize from among all participating lotteries, then the prize winner(s) in Texas will be paid in accordance with their selection of cash option or annual payment option made at the time of ticket purchase.

(iv) In the event of a prize winner who selects the cash value option, the prize winner's share will be paid in a single payment upon completion of internal validation procedures. The player in Texas must make the election of the cash value option at the time of ticket purchase. If the player does not make the election at the time of ticket purchase, the share will be paid as if he had selected the cash value option [~~in accordance with clause (vi) of this subparagraph~~]. The cash value of the grand/jackpot prize will be the amount determined by the highest $1 million annuity that is funded by the amount of that portion of the prize fund allocated to the grand/jackpot prize category, divided by the annuity factor established for the draw date divided by the number of grand/jackpot prize winners.

(v) Funds for the initial payment of an annuitized option prize or the cash value option prize will be made available to the Texas Lottery from all participating party lotteries as soon as practicable on the business day falling fourteen (14) calendar days after the date of the winning drawing.

(vi) Annual payment option grand/jackpot prizes shall be paid in 26 annual installments upon completion of internal validation procedures. The initial payment shall be paid upon completion of internal validation procedures. The subsequent 25 payments shall be paid annually to coincide with the month of the Federal auction date at which the bonds were purchased to fund the annuity. All of the twenty-five (25) remaining payments shall be equal and must be in $1,000 denominations to facilitate the securities purchase. The full cash equivalent prize shall be awarded to the prize winner, such that the prize winner receives equal payments in $1,000 increments for installments 2 through 26, and any residual cash shall be added to the first annual payment. In no event shall the first cash payment exceed the remaining equal installments by more than $25,000. The total of the first payment, plus the cost of investments shall equal the total cash equivalent amount in clause (iv) of this subparagraph. All such payments shall be made within seven days of the anniversary of the annual auction date.

(vii) The grand/jackpot prize must be claimed at the Austin claim center regardless of the prize amount.

(C) Second through ninth level prizes.

(i) Second Prize: Mega Millions plays matching five of the five Mega Millions winning numbers drawn for field 1 (in any

order), but not matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a second prize of $250,000.

(ii) Third Prize: Mega Millions plays matching four of the five Mega Millions winning numbers drawn for field 1 (in any order) and the Mega Millions winning number drawn for field 2 shall be entitled to receive a third prize of $10,000.

(iii) Fourth Prize: Mega Millions plays matching four of the five Mega Millions winning numbers drawn for field 1 (in any order) but not matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a fourth prize of $150.

(iv) Fifth Prize: Mega Millions plays matching three of the five Mega Millions winning numbers drawn for field 1 (in any order) and the Mega Millions winning number drawn for field 2 shall be entitled to receive a fifth prize of $150.

(v) Sixth Prize: Mega Millions plays matching two of the five Mega Millions winning numbers drawn for field 1 (in any order) and the Mega Millions winning number drawn for field 2 shall be entitled to receive a sixth prize of $10.

(vi) Seventh Prize: Mega Millions plays matching three of the five Mega Millions winning numbers drawn for field 1 (in any order) and not matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a seventh prize of $7.

(vii) Eighth Prize: Mega Millions plays matching one of the five Mega Millions winning numbers drawn for field 1 and the Mega Millions winning number drawn for field 2 shall be entitled to receive an eighth prize of $3.

(viii) Ninth Prize: Mega Millions plays matching no numbers of the five Mega Millions winning numbers drawn for field 1 but matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a ninth prize of $2.

(ix) Each Mega Millions second through ninth prize shall be paid in one payment.

(D) In a single drawing, a player may win in only one prize category per single Mega Millions play in connection with Mega Millions winning numbers, and shall be entitled only to the highest prize.

(E) For purpose of prize calculation with respect to any Mega Millions pari-mutuel prize, the calculation shall be rounded down so that prizes shall be paid in multiples of one dollar.

(F) With respect to the Mega Millions annuitized grand/jackpot prize, the prize amount paid shall be the highest fully funded multiple of one million dollars based solely on the cash option grand/jackpot prize amount as determined by subparagraph (B)(iv) of this paragraph.

(G) Subject to the laws and rules governing each party lottery, the number of prize categories and the allocation of the prize fund among the prize categories may be changed at the discretion of the directors, for promotional purposes. Such change shall be announced by public notice.

(H) Prize liability cap. Notwithstanding any provision in the rule to the contrary, should total prize liability (exclusive of grand/jackpot prize carry forward) exceed 300 percent of draw sales or 50 percent of draw sales plus $50,000,000, whichever is less, (both hereinafter referred to as the "liability cap"), the second through fifth prizes shall be paid on a pari-mutuel rather than guaranteed prize basis, provided, however, that in no event shall the pari-mutuel prize be greater than the guaranteed prize. The amount to be used for the allocation of such pari-mutuel prizes (two through five) shall be the liability cap less the amount paid for the grand/jackpot prize and prize levels six through nine.

(i) Pari-Mutuel Treatment of Megaplier Prize Levels Two (2) through Five (5). The expected payout percentage for any Mega Millions Megaplier drawing is 50% of Mega Millions Megaplier sales. However, because Mega Millions Megaplier pays out fixed prizes, the total prize liability will be above or below 50% of sales based on the number of winners at each prize level. If the base prizes awarded for any Mega Millions drawing meet the pari-mutuel criteria of the Mega Millions liability cap, as outlined in the Mega Millions Finance & Operations procedures, then the Megaplier prizes shall be calculated upon the same pari-mutuel basis.

(ii) If the Mega Millions liability cap is exceeded, prize level two (2), normally $1 million for a Mega Millions ticket sold with the Megaplier option, shall be a reduced amount, said reduction being the same percentage as the base reduced Mega Millions Tier 2 prize level.

(iii) Prize levels three (3) through five (5) shall be an amount equal to the pari-mutuel prize value multiplied by the Megaplier number selected for that drawing.

(g) Subscription sales. A subscription sales program may be offered, at the discretion of the executive director.

(h) Ticket purchases.

(1) Mega Millions tickets may be purchased in Texas only at a licensed location from a Texas Lottery retailer authorized by the lottery operations director to sell on-line tickets. No Mega Millions ticket purchased outside Texas may be presented to a Texas Lottery retailer for payment within Texas.

(2) Mega Millions tickets shall show the player's selection of numbers or Quick Pick (QP) numbers, election of the Megaplier feature, Megaplier boards played, drawing date, grand/jackpot payment option, and validation and reference numbers.

(3) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. A ticket is a bearer instrument until signed. Neither a party lottery nor its sales agents shall be responsible for lost or stolen tickets.

(4) Except as provided in subsection (d)(2) of this section, Mega Millions tickets must be purchased using official Mega Millions playslips. Playslips which have been mechanically completed are not valid. Mega Millions tickets must be printed on official Texas Lottery paper stock and purchased at a licensed location through an authorized Texas Lottery retailer's terminal.

(5) In purchasing a ticket issued for Mega Millions, the player agrees to comply with and be bound by all applicable statutes, administrative rules and regulations, and procedures of the party lottery of the state in which the Mega Millions ticket is issued, and by directives and determinations of the director of that party lottery. Additionally, the player shall be bound to all applicable provisions in the Mega Millions Finance and Operations Procedures. The player agrees, as its sole and exclusive remedy, that claims arising out of a Mega Millions ticket can only be pursued against the party lottery of ticket purchase. Litigation, if any, shall only be maintained within the state in which the Mega Millions ticket was purchased and only against the party lottery that issued the ticket. Nothing in this rule shall be construed as a waiver of any defense or claim the Texas Lottery may have in the event a player pursues litigation against the Texas Lottery, its officers, or employees.

(i) Drawings.

(1) The Mega Millions drawings shall be held at the time(s) and location set out in the multijurisdiction agreement.

(2) Each drawing shall determine, at random, the six winning numbers in accordance with the Mega Millions drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the Commission in accordance with the drawing procedures. The winning numbers shall be used in determining all Mega Millions winners for that drawing.

(3) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined immediately prior to a drawing and immediately after the drawing.

(j) Prize winners. The name and city of the winner of the grand/jackpot prize, or second prize, will be disclosed in a news conference or in a news release and the winner may be requested to participate in a news conference. If a winner claims a Mega Millions grand/jackpot or second prize as a legal entity, the entity shall provide the name of a natural person who is a principal of the legal entity. This natural person may be required to be available for appearance at any news conference regarding the prize and may be featured in any party lottery's releases.

(k) Unclaimed Prizes for winning Mega Millions tickets for which no claim or redemption is made within the specified claim period for each respective party lottery, the corresponding prize monies shall be returned to the other party lotteries in accordance with procedures for the reconciliation of prize liability pursuant to the multijurisdiction agreement and as may be agreed to from time to time by the directors of the party lotteries.

(l) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award(s).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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16 TAC §401.317

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.317, "Powerball®" On-Line Game Rule. The purpose of the proposed amendments is to transition from the "annuitized payment" option to the "cash value" option as the default jackpot payment option at all retailer sales terminals and player self-service sales terminals. This transition will be synchronized with the transition from old retailer and self-service terminals to new retailer and self-service terminals.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Michael Anger, Director of Lottery Operations, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated will be that the default jackpot payment option will be the Cash Value Option which is consistent with the current selection of "Cash Value Option" made by the majority of players.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Pete Wassdorf, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 2:00 p.m. on Wednesday, February 16, 2011, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The amendments implement Texas Government Code, Chapter 466.

§401.317. "Powerball®" On-Line Game Rule.

(a) Powerball. Powerball is a Multi-State Lottery Association (MUSL) on-line game, which has been opened to the participation of the twelve states now conducting the Mega Millions on-line games, and with which the Texas Lottery Commission has elected to participate under an Agreement with MUSL (hereinafter called the Reciprocal Game Agreement.) "Powerball" is authorized to be conducted by the executive director under the conditions of the Reciprocal Game Agreement, MUSL rules, the laws of the State of Texas, this section, and under such further instructions, directives, and procedures as the executive director may issue in furtherance thereof. In this regard, the executive director is authorized to issue such further instructions and directives as may be necessary to conform the conduct and play of Powerball to the requirements of the Reciprocal Game Agreement, if, in the opinion of the executive director, such instructions, directives, and procedures are in conformance with state law. If a conflict arises between this section and §401.304 of this chapter (relating to On-Line Game Rules (General)), this section shall have precedence. The purpose of the Powerball game is the generation of revenue for MUSL Party Lottery members and Party Lotteries participating under the Reciprocal Game Agreement, through the operation of a specially designed multi-jurisdiction lottery game that will award prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings. In addition to other applicable rules contained in Chapter 401, this section and definitions apply unless the context requires a different meaning or is otherwise inconsistent with the intention of the rules adopted by the MUSL or the MUSL Powerball Group. This rule is to be effective on the later of 20 days after filing the rule with the Texas Register, or the signing of the Powerball Reciprocal Game Agreement by the parties to the Agreement. The date signing of such Agreement will be published on the Commission's website.

(b) Definitions.

(1) "Agent" or "retailer" means a person or entity authorized by the Texas Lottery Commission (TLC) to sell lottery tickets.

(2) "Quick Pick" means the random selection of numbers by the terminals that are printed on a ticket and are played by a player in the game.

(3) "Drawing" means the formal process of selecting winning numbers which determine the number of winners for each prize level of the game.

(4) "Game board", "board", "panel, or "playboard" means that area of the play slip, which contains two sets of numbered squares to be marked by the player, the first set containing fifty-nine (59) squares, number one (1) through fifty-nine (59) and the second set containing thirty-nine (39) squares, number one (1) through thirty-nine (39).

(5) "Game ticket" or "ticket" means an acceptable evidence of play, which is a ticket produced by a terminal and meets the specifications defined in the MUSL rules or the rules of each member or participating Party Lottery (Ticket Validation).

(6) "Match 5 Bonus Prize" means the bonus money won when a Grand Prize has reached a new high level and bonus prize monies have been declared by the MUSL Powerball Group under their Rules. The Match 5 Bonus Prize does not include the original amount declared for the Match 5 Prize.

(7) "MUSL" means the Multi-State Lottery Association, an association of governmental lotteries.

(8) "MUSL Board" means the governing body of the MUSL which is comprised of the chief executive officer of each Party Lottery member of MUSL. It does not include participating non-members.

(9) "On-Line Lottery Game" means a lottery game which utilizes a computer system to administer plays, the type of game, and amount of play for a specified drawing date, and in which a player either selects a combination of numbers or allows number selection by a random number generator operated by the terminal, referred to as Quick Pick. MUSL will conduct a drawing to determine the winning combination(s) in accordance with the Powerball rules and the Powerball drawing procedures.

(10) "Party Lottery" means a state lottery or lottery of a political jurisdiction or entity which is a member of MUSL, or is a participating lottery, participating in Powerball pursuant to the Reciprocal Game Agreement with MUSL, and, in the context of these rules and the MUSL Powerball Group Rules, that has joined in selling the Powerball game or games.

(11) "Play" or "bet" means the six (6) numbers, the first five (5) from a field of fifty-nine (59) numbers and the last one (1) from a field of thirty-nine (39) numbers, that appear on a ticket as a single lettered selection and are to be played by a player in the game.

(12) "Play slip" or "bet slip" means an optically readable card issued by the Commission used by players of Powerball to select plays and to elect all features. There shall be five play boards on each playslip. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(13) "Powerball Group" means the MUSL member group of lotteries which has joined together to offer the Powerball product pursuant to the terms of the Multi-State Lottery Agreement and the Powerball Group's rules, including the MUSL Powerball Drawing Procedures. In these rules, wherever the term "Powerball Group" is used it is referring to the MUSL Powerball Group.

(14) "Prize" means an amount paid to a person or entity holding a winning ticket. "No advertised Grand Prize in a Powerball game is a guaranteed amount, and all advertised prizes, even Set Prizes, are estimated amounts."

(15) "Set Prize" means all other prizes except the Grand Prize that are advertised to be paid by a single cash payment and, except in instances outlined in this section, will be equal to the prize amount established by the MUSL Board for the prize level.

(16) "Terminal" means a device authorized by a Party Lottery to function in an on-line, interactive mode with the lottery's computer system for the purpose of issuing lottery tickets and entering, receiving, and processing lottery transactions, including purchases, validating tickets, and transmitting reports.

(17) "Winning numbers" means the six (6) numbers, the first five (5) from a field of fifty-nine (59) numbers and the last one (1) from a field of thirty-nine (39) numbers, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket.

(c) Game Description.

(1) Powerball is a five (5) out of fifty-nine (59) plus one (1) out of thirty-nine (39) on-line lottery game, drawn every Wednesday and Saturday, which pays the Grand Prize, at the election of the player made in accordance with this rule or by a default election made in accordance with this rule, either on an annuitized pari-mutuel basis or as a cash lump sum payment of the total cash held for this prize pool on a pari-mutuel basis. Except as provided in this section, all other prizes are paid on a set cash basis. To play Powerball, a player shall select five (5) different numbers, from one (1) through fifty-nine (59) and one (1) additional number from one (1) through thirty-nine (39), for input into a terminal. The additional number may be the same as one of the first five numbers selected by the player. Tickets can be purchased for one dollar (U.S. $1.00), including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery ticket, either from a terminal operated by an agent (i.e., a clerk activated terminal) or from a terminal operated by the player (i.e., a player activated terminal). If purchased from an agent, the player may select a set of five numbers and one additional number by communicating the six (6) numbers to the agent, or by marking six (6) numbered squares in any one game board on a play slip and submitting the play slip to the agent or by requesting "quick picks" from the agent. The agent will then issue a ticket, via the terminal, containing the selected, or terminal generated, set or sets of numbers, each of which constitutes a game play. Tickets can be purchased from a player activated terminal by use of a touch screen or by inserting a play slip into the machine.

(2) Claims. A ticket (subject to the validation requirements set forth in subsection (g) of this section (Ticket Validation)) shall be the only proof of a game play or plays and the submission of a winning ticket to the issuing Party Lottery or its authorized agent shall be the sole method of claiming a prize or prizes. A play slip has no pecuniary or prize value and shall not constitute evidence of ticket purchase or of numbers selected. A terminal produced paper receipt has no pecuniary or prize value and shall not constitute evidence of ticket purchase or of numbers selected.

(3) Cancellations Prohibited. A ticket may not be voided or canceled by returning the ticket to the selling agent or to the lottery, including tickets that are printed in error. No ticket which can be used to claim a prize shall be returned to the lottery for credit. Tickets accepted

by retailers as returned tickets and which cannot be re-sold shall be deemed owned by the bearer thereof.

(4) Player Responsibility. It shall be the sole responsibility of the player to verify the accuracy of the game play or plays and other data printed on the ticket. The placing of plays is done at the player's own risk through the on line agent who is acting on behalf of the player in entering the play or plays.

(5) Entry of Plays. Plays may only be entered manually using the lottery terminal keypad or touch screen or by means of a play slip provided by the Party Lottery and hand-marked by the player or by such other means approved by the Party Lottery. Retailers shall not permit the use of facsimiles of play slips, copies of play slips, or other materials that are inserted into the terminal's play slip reader that are not printed or approved by the Party Lottery. Retailers shall not permit any device to be connected to a lottery terminal to enter plays, except as approved by the Party Lottery.

(6) Subscription sales. A subscription sales program may be offered, at the discretion of the executive director.

(d) Prize Pool.

(1) Prize Pool. The prize pool for all prize categories shall consist of fifty percent of each drawing period's sales, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery ticket, after the prize reserve accounts are funded to the amounts set by the Powerball Group. Any amount remaining in the prize pool at the end of this game shall be carried forward to a replacement game or expended in a manner as directed by the Powerball Group in accordance with state law.

(2) Prize Reserve Accounts. An amount equal to up to two percent of a Party Lottery's sales, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery ticket, shall be deducted from a Party Lottery's Grand Prize Pool and placed in trust in one or more prize reserve accounts until the Party Lottery's share of the prize reserve account(s) reaches the amounts designated by the Powerball Group. Once the Party Lottery's share of the prize reserve accounts exceeds the designated amounts, the excess shall become part of the Grand Prize Pool. The Powerball Group, with approval of the MUSL Finance and Audit Committee, may establish a maximum balance for the prize reserve account(s). The Powerball Group may determine to expend all or a portion of the funds in the accounts for the payment of prizes or special prizes in the game; subject to the approval of the MUSL Finance and Audit Committee. The shares of a Party Lottery may be adjusted with refunds to the Party Lottery from the prize reserve account(s) as may be needed to maintain the approved maximum balance and shares of the Party Lotteries. Any amount remaining in a prize reserve account at the end of this game shall be carried forward to a replacement prize reserve account or expended in a manner as directed by the Powerball Group in accordance with state law.

(3) Expected Prize Payout Percentages. The Grand Prize shall be determined on a pari-mutuel basis. Except as provided in this section, all other prizes awarded shall be paid as set cash prizes with the following expected prize payout percentages:
Figure: 16 TAC §401.317(d)(3) (No change.)

(A) The prize money allocated to the Grand Prize category shall be divided equally by the number of game boards winning the Grand Prize.

(B) The prize pool percentage allocated to the Set Prizes (the cash prizes of $200,000 or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Set Prizes awarded in the current draw. If the total of the Set Prizes awarded in a drawing exceeds the percentage of the prize pool allocated to the Set Prizes, then the amount needed to fund the Set Prizes awarded shall be drawn from the following sources, in the following order:

(i) the amount allocated to the Set Prizes and carried forward from previous draws, if any;

(ii) an amount from the set prize reserve account, if available, not to exceed twenty-five million dollars ($25,000,000) per drawing.

(C) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded, then the highest set prize shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest set prize shall become a pari-mutuel prize. This procedure shall continue down through all set prize levels, if necessary, until all set prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning plays in proportion to their respective prize percentages.

(D) The prize money allocated to the Match 5 Bonus Prize shall be divided equally by the number of game boards winning the Match 5 prize when a game board wins the new high jackpot amount.

(e) Probability of Winning. The following table sets forth the probability of winning and the probable distribution of winners in and among each prize category, based upon the total number of possible combinations in Powerball.
Figure: 16 TAC §401.317(e) (No change.)

(f) Prize Payment.

(1) Grand Prizes. The advertised Grand Prize in a Powerball game is not a guaranteed amount; it is an estimated amount, and all advertised prizes, even advertised Set Prizes, are estimated amounts. At the time of ticket purchase, a person may select the option for payment of the cash value or annuitized payments of a share of the Grand Prize if the play is a winning play. [~~Grand Prizes shall be paid, at the election of the player at the time of purchase, with either a per winner annuity or cash payment. If the payment election is not made at the time of purchase, then the prize shall be paid as an annuity prize.~~]

(A) If no payment option is selected--The Commission has just entered into a new lottery operations and services contract, an element of which will be the replacement of retailer and self-service terminals. After the new terminals replace the old terminals, the default payment option, where an option is not chosen by the player, will be the cash value option. During the transition period when there are both old terminals and new terminals in use, if no payment option selection is made, the payment option will be as shown in the chart below:
Figure: 16 TAC §401.317(f)(1)(A)

(B) An election made by the player or automatic selection made at the time of purchase is final and cannot be revoked, withdrawn or otherwise changed. Shares of the Grand Prize shall be determined by dividing the cash available in the Grand Prize Pool equally among all winners of the Grand Prize. Winner(s) who elect a cash payment shall be paid their share(s) in a single cash payment. The annuitized option prize shall be determined by multiplying a winner's share of the Grand Prize Pool by the annuity factor established in accordance with Texas law and the rules of the Texas Comptroller of Public Accounts. The annuity factor is determined by the best total securities price obtained through a competitive bid of qualified, pre-approved brokers made after it is determined that the prize is to be paid as an annuity prize. Neither MUSL nor any Party Lottery shall be re-

sponsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to MUSL. In certain instances announced by the Powerball Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to paragraph (5) of this subsection. If individual shares of the cash held to fund an annuity is less than $250,000, the Powerball Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Grand Prize Pool. All annuitized prizes shall be paid annually in thirty (30) payments with the initial payment being made in cash, to be followed by twenty-nine (29) payments funded by the annuity. All annuitized prizes shall be paid annually in thirty (30) graduated payments, as provided by the MUSL rules, (increasing each year) at a rate as determined by the MUSL Product Group. Prize payments may be rounded down to the nearest one thousand dollars ($1,000). Annual payments after the initial payment shall be made by the lottery on the anniversary date or if such date falls on a non-business day, then the first business day following the anniversary date of the selection of the jackpot winning numbers. Funds for the initial payment of an annuitized prize or the lump sum cash prize shall be made available by MUSL for payment by the Party Lottery no earlier than the fifteenth calendar day (or the next banking day if the fifteenth day is a holiday) following the drawing. If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full lump sum cash amount may be delayed pending receipt of funds from the party lotteries. The identification of the securities to fund the annuitized prize shall be at the sole discretion of the State of Texas.

(2) Payment of Prize Payments upon the Death of a Prize Winner. In the event of the death of a prize winner, payments will be made in accordance with §401.310 of this chapter (relating to Payment of Prize Payments Upon Death of Prize Winner).

(3) Low-Tier Cash Prize Payments. All low-tier cash prizes (all prizes except the Grand Prize) shall be paid in cash through the Party Lottery which sold the winning ticket(s). A Party Lottery may begin paying low-tier cash prizes after receiving authorization to pay from the MUSL central office.

(4) Prizes Rounded. Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first cash payment to the winner or winners. Prizes other than the Grand Prize, which, under this section, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

(5) Rollover. If the Grand Prize is not won in a drawing, the prize money allocated for the Grand Prize shall roll over and be added to the Grand Prize Pool for the following drawing. If a new high Grand Prize is not won in a drawing, the prize money allocated for the Match 5 Bonus Prizes shall roll over and be added to the Match 5 Bonus Prize pool for the following drawing.

(6) Funding of Guaranteed Prizes. The Powerball Group may offer guaranteed minimum Grand Prize amounts or minimum increases in the Grand Prize amount between drawings or make other changes in the allocation of prize money where the Powerball Group finds that it would be in the best interest of the game. If a minimum Grand Prize amount or a minimum increase in the Grand Prize amount between drawings is offered by the Powerball Group, then the Grand Prize shares shall be determined as follows. If there are multiple Grand Prize winners during a single drawing, each selecting the annuitized option prize, then a winner's share of the guaranteed annuitized Grand Prize shall be determined by dividing the guaranteed annuitized Grand Prize by the number of winners. If there are multiple Grand Prize winners during a single drawing and at least one of the Grand Prize winners has elected the annuitized option prize, then the best bid submitted by MUSL's pre-approved qualified brokers shall determine the cash pool needed to fund the guaranteed annuitized Grand Prize. If no winner of the Grand Prize during a single drawing has elected the annuitized option prize, then the amount of cash in the Grand Prize Pool shall be an amount equal to the guaranteed annuitized amount divided by the average annuity factor of the most recent three best quotes provided by MUSL's pre-approved qualified brokers submitting quotes. In no case, shall quotes be used which are more than two weeks old and if less than three quotes are submitted, then MUSL shall use the average of all quotes submitted. Changes in the allocation of prize money shall be designed to retain approximately the same prize allocation percentages, over a year's time, set out in these rules. Minimum guaranteed prizes or increases may be waived if the alternate funding mechanism set out in subsection (d)(3)(B) of this section becomes necessary.

(7) Limited to Highest Prize Won. The holder of a winning ticket may win only one prize per board in connection with the winning numbers drawn, and shall be entitled only to the prize won by those numbers in the highest matching prize category.

(8) Prize Claim Period. Prize claims shall be submitted within the period set by the Party Lottery selling the ticket. If no such claim period is established, all grand prize claims shall be made within 180 days after the drawing date.

(9) Grand Prize Maximum Increase. Creation of Match 5 Bonus Prizes. When the Grand Prize reaches a new high annuitized amount, through a procedure as determined by the Powerball Group the maximum amount to be allocated to the Grand Prize Pool from the Grand Prize percentage shall be the previous high amount plus $25 million (annuitized) or as otherwise set by the Powerball Group. Any amount of the Grand Prize percentage which exceeds the $25 million (annuitized) increase shall be added to the Match 5 Bonus Prize Pool. The Match 5 Bonus Prize Pool is hereby created, and shall accumulate until the Grand Prize is won, at which time the Match 5 Bonus Prize Pool shall be divided equally by the number of game boards winning the Match 5 Prize. If there are no Match 5 winners on the draw when the new high Grand Prize is won, then the Match 5 Bonus Prize Pool shall be divided equally by the number of game boards winning the Match 4+1 prize.

(10) Jackpot Management. After a drawing in which a Powerball jackpot is won, the MUSL Director and the MUSL Chief Finance Officer shall determine if the jackpot reached a new high annuitized amount that exceeded the previous record annuitized amount by more than $25 million annuitized. If both events occurred, then the jackpot prize won shall be the previous high annuitized amount plus $25 million, and any amount in the Powerball jackpot prize pool which exceeds that amount shall be added and paid out in Match 5 Bonus prizes.

(g) Ticket Validation. To be a valid ticket and eligible to receive a prize, a ticket shall satisfy all the requirements established by the Commission for validation of winning tickets sold through its on line system and any other validation requirements adopted by the Powerball Group and the MUSL Board. The MUSL and the Party Lotteries shall not be responsible for tickets which are altered in any manner.

(h) Ticket Responsibility.

(1) Signature. Until such time as a signature is placed upon a ticket in the area designated for signature, a ticket shall be owned by the bearer of the ticket. When a signature is placed on the ticket in the

place designated, the person whose signature appears in such area shall be the owner of the ticket and shall be entitled (subject to the validation requirements in subsection (g) of this section (Ticket Validation) and state or district law) to any prize attributable thereto.

(2) Multiple Claimants. The issue of multiple claimants shall be handled in accordance with Texas Government Code Chapter 466 and §401.304 of this chapter.

(3) Stolen Tickets. The Powerball Group, the MUSL and the Party Lotteries shall not be responsible for lost or stolen tickets.

(i) Ineligible Players.

(1) A ticket or share for a MUSL game issued by the MUSL or any of its Party Lotteries shall not be purchased by, and a prize won by any such ticket or share shall not be paid to:

(A) a MUSL employee, officer, or director;

(B) a contractor or consultant under agreement with the MUSL to review the MUSL audit and security procedures;

(C) an employee of an independent accounting firm under contract with MUSL to observe drawings or site operations and actually assigned to the MUSL account and all partners, shareholders, or owners in the local office of the firm; or

(D) an immediate family member (parent, stepparent, child, stepchild, spouse, or sibling) of an individual described in subparagraphs (A), (B), and (C) of this paragraph and residing in the same household.

(2) Those persons designated by a Party Lottery's law as ineligible to play its games shall also be ineligible to play the MUSL game in that Party Lottery's jurisdiction.

(j) Applicable Law. In purchasing a ticket, the purchaser agrees to comply with and abide by all applicable laws, rules, regulations, procedures, and decisions of the Party Lottery where the ticket was purchased.

(k) Powerball Special Game Rules: Powerball Power Play.

(1) Power Play Description. The Powerball Power Play is a limited extension of the Powerball game and is conducted in accordance with the Powerball game rules and other lottery rules applicable to the Powerball game except as may be amended herein. Power Play will begin at a time announced by the Party Lottery and will continue until discontinued by the lottery. Power Play will offer to the owners of a qualifying play a chance to multiply the amount of any of the eight lump sum Set Prizes (the lump sum prizes normally paying $3 to $200,000) won in a drawing held during Power Play. The Grand Prize jackpot is not a Set Prize and will not be multiplied. Match 5 Bonus Prizes are awarded independent of the Power Play option and are not multiplied by the Power Play Multiplier.

(2) Qualifying Play. A qualifying play is any single Powerball play for which the player pays an extra dollar for the Power Play option play and which is recorded at the Party Lottery's central computer as a qualifying play.

(3) Prizes to be Multiplied. A qualifying play which wins one of seven lowest lump sum Set Prizes (excluding the Match 5+0 prize) will be multiplied by the number selected, either two, three, four, or five (2, 3, 4, or 5), in a separate random Power Play drawing announced during the official Powerball drawing show. The announced Match 5+0 prize, for players selecting the Power Play option, shall be multiplied by five (5) unless a higher limited promotional multiplier is announced by the Powerball Group.

(4) Power Play Draws. MUSL will conduct a separate random "Power Play" drawing and announce results during each of the regular Powerball drawings held during the Power Play offering. During each Powerball drawing a single number (2, 3, 4, or 5) shall be drawn. The Powerball Group may change one or more of these multiplier numbers for special promotions from time to time.

(5) Prize Pool.

(A) Prize Pool. The prize pool for all prize categories shall consist of up to forty-nine and five tenths percent (49.5%) of each drawing period's sales, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery ticket, after the Powerball prize reserve accounts are funded to the amounts set by the Powerball Group. Any amount remaining in the prize pool at the end of this game shall be carried forward to a replacement game or expended in a manner as directed by the Powerball Group in accordance with state law.

(B) Prize Reserve Accounts. An additional one-half percent (0.5%) of sales, including any specific statutorily mandated tax of a Party Lottery to be included in the price of a lottery ticket, may be collected and placed in the rollover account or in trust in one or more prize reserve accounts until the prize reserve accounts reach the amounts designated by the Powerball Group.

(C) Expected Prize Payout. Except as provided in this section, all prizes awarded shall be paid as lump sum Set Prizes. Instead of the Powerball set prize amounts, qualifying Power Play plays will pay the amounts shown below when matched with the Power Play number drawn:
Figure: 16 TAC §401.317(k)(5)(C) (No change.)

(D) In certain rare instances, the Powerball set prize amount may be less than the amount shown. In such case, the Power Play prizes will be a multiple of the changed Powerball prize amount announced after the draw. For example, if the Match 5+0 Powerball set prize amount of $200,000 becomes $150,000 under the rules of the Powerball game, then a Power Play player winning that prize amount with a 5X multiplier would win $750,000 ($150,000 x 5).

(6) Probability of Winning. The following table sets forth the probability of the various Power Play numbers being drawn during a single Powerball drawing, except that the Power Play number for the Match 5+0 prize will be at least five (5X); setting the probability of the 5X being drawn for the Match 5+0 prize at 1 in 1. The Powerball Group may elect to run limited promotions that may increase the multiplier numbers.
Figure: 16 TAC §401.317(k)(6) (No change.)

(7) Limitation of Payment of Power Play Prizes.

(A) Prize Pool Carried Forward. The prize pool percentage allocated to the Power Play Set Prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Set Prizes awarded in the current draw.

(B) Pari-Mutuel Prizes--All Prize Amounts. If the total of the original Powerball Set Prizes and the multiplied Power Play Set Prizes awarded in a drawing exceeds the percentage of the prize pools allocated to the Set Prizes, then the amount needed to fund the Set Prizes (including the multiplied Set Prizes) awarded shall be drawn from the following sources, in the following order:

(i) the amount allocated to the Set Prizes and carried forward from previous draws, if any;

(ii) an amount from the Powerball Set-Prize Reserve Account, if available in the account, not to exceed twenty-five million dollars ($25,000,000) per drawing.

(C) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded (including multiplied prizes), then the highest set prize (including the multiplied prizes) shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest set prize, including the multiplied prize, shall become a pari-mutuel prize. This procedure shall continue down through all Set Prizes levels, if necessary, until all set prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this section shall be divided among the winning plays in proportion to their respective prize percentages. In rare instances, where the Powerball set prize amount may be funded but the money available to pay the full multiplier may not be available due to an unanticipated number of winners, the Powerball Group may announce pari-mutuel shares of the available pool for the Power Play payment only.

(8) Prize Payment.

(A) Prize Payments. All Power Play prizes shall be paid in one lump sum through the Party Lottery that sold the winning ticket(s). A Party Lottery may begin paying Power Play prizes after receiving authorization to pay from the MUSL central office.

(B) Prizes Rounded. Prizes, which, under these rules, may become pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100281
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 344-5275

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SUBCHAPTER E. RETAILER RULES

16 TAC §401.372

The Texas Lottery Commission (Commission) proposes new 16 TAC §401.372, Display of License. The purpose of the proposed new rule is to comply with Texas Government Code, §466.157, which requires the Commission to prescribe by rule the criteria for the display of the license in the place of business at which the sales agents sell lottery products.

Kathy Pyka, Controller, has determined that for each year of the first five years the new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the new rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Michael Anger, Director of Lottery Operations, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated will be that the rule will comply with the statutory requirement to require sales agents to prominently display their licenses. The result will help ensure the integrity of the lottery by informing the public of the authority of the lottery sales.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to Pete Wassdorf, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The new rule implements Texas Government Code, Chapter 466.

§401.372. Display of License.

(a) A licensee shall prominently and conspicuously display, in an area readily available and visible to the public, the original or a copy of the current license, whether permanent or temporary, at each licensed location, whether fixed or mobile. If a copy is displayed, the copy must be at least as large and as legible as the original license.

(b) A licensee shall not display a license which is expired or has been revoked, after the licensee has been notified of the revocation of the license.

(c) A licensee shall not display a license which has been altered in any substantive way.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100282
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5275

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CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §402.203

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.203, Unit Accounting. The purpose of the

proposed amendments is to clarify the requirements, process, and timelines a licensed authorized organization must follow related to expending net proceeds in its bingo account when joining an accounting unit. Specifically, the amendments: (1) add a new subsection (d)(4) regarding designated agents; (2) add a new subsection (i)(2) regarding the proper disbursement of remaining net proceeds; and (3) add a new subsection (i)(6) regarding reporting the final disposition of all proceeds in its bingo account.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is the specification of processes, reporting requirements, and timelines related to disbursement of remaining net proceeds by a licensed authorized organization joining an accounting unit.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, February 16, 2011, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Texas Occupations Code, Chapter 2001.

§402.203. Unit Accounting.

(a) - (c) (No change.)

(d) Unit Representation.

(1) All units, with the exception of a unit organized under a unit agreement with a Unit Manager, must name a designated agent who is responsible for providing the Commission access to all inventory and financial records of the unit on request by the Commission.

(2) It is the responsibility of the unit members to ensure that the unit's designated agent is knowledgeable of and able to provide information to the Commission on:

(A) the unit agreement or trust agreement;

(B) submission of all required forms;

(C) unit Quarterly Report; and

(D) unit's bingo records.

(3) A unit must complete a form prescribed by the Commission to designate an authorized representative.

(4) The designated agent will make available all unit accounting records to any member of a licensed authorized organization whose organization is or was a member of the accounting unit within 10 workdays of the request.

(e) - (h) (No change.)

(i) Transfer of Funds to the Unit Account by new Members.

(1) A licensed authorized organization joining a unit may transfer funds from its previous bingo account into the unit bingo account at the time the unit is formed or at the time of joining an existing unit and within 60 days thereafter. Any additional funds transferred to the unit bingo account must comply with §402.202 of this chapter. At no time, can funds that have been previously reported on a bingo quarterly report as charitable distributions be transferred to the unit account.

(2) All net proceeds remaining in the organization's former bingo account at the time it joins a unit must be disbursed by the organization for its charitable purpose by the last day of the quarter following the date the organization joined the unit or transferred to the unit bingo account in accordance with paragraph (1) of this subsection. At no time can funds that are required by Occupations Code, §2001.457 to be distributed for the charitable purpose of the organization be transferred to the unit bingo account.

(3) [~~(2)~~] As soon as an organization joins a unit, all of its bingo expenses must be paid from the unit bingo account including outstanding bingo expenses and subsequent expenses. The organization must make an accurate accounting of all outstanding expenses, and the total amount should be included in the funds transferred at the time the unit is formed or at the time of joining an existing unit.

(4) [~~(3)~~] If a unit member does not have sufficient funds to cover outstanding bingo expenses or the amount required to join the unit, the unit member's portion of the charitable distribution may be reduced until these obligations have been satisfied. This business practice may be used provided that the exact terms are reflected in the unit agreement, a copy of the unit agreement is provided to the Charitable Bingo Operations Division, and the unit meets the charitable distribution requirement.

(5) [~~(4)~~] If the organization transfers funds from its previous bingo account into the unit bingo account, the funds must be reported on the unit's "Texas Bingo Quarterly Report" for the quarter they were transferred and on the last "Texas Bingo Quarterly Report" the organization filed as a non-unit member.

(6) An organization that is required to file a Texas Bingo Quarterly Report for a period prior to joining an accounting unit must file a form prescribed by the Commission reporting a final disposition of all proceeds in its bingo account for the quarter following the quarter it was last required to file a Texas Bingo Quarterly Report apart from the unit. The form must be submitted with the unit's "Texas Bingo Quarterly Report" for that quarter and would be subject to all "Texas Bingo Quarterly Report" filing deadlines, requirements and penalties.

(j) - (k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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16 TAC §402.205

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.205, Unit Agreements. The purpose of the proposed amendments is to delete language that is duplicated in 16 TAC §402.100 and to add language that requires an accounting unit to notify the Commission of a change in unit membership prior to the date the unit membership changes. Specifically, the amendments: (1) delete definitions for "Act" and "Rules", (2) add a new subsection (d) regarding notification requirements when there is a change in unit members and the amended unit agreement; and (3) at newly relettered subsection (q), the language "Apart from a change in unit membership, any" has been added.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is the removal of language that is duplicated in 16 TAC §402.100 and the existence of information on the manner and timelines to follow to notify the Commission of a change in unit membership.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, February 16, 2011, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Texas Occupations Code, Chapter 2001.

§402.205. Unit Agreements.

(a) Definitions. The following term [~~terms~~], when used in this section, shall have the following meaning [~~meanings~~]:

[~~(1)~~] Unit Agreement--A unit accounting agreement or a trust agreement forming a unit.

[~~(2) Act--Texas Occupations Code, Chapter 2001, entitled the Bingo Enabling Act.~~]

[~~(3) Rules--The Charitable Bingo Administrative Rules in effect at the time the unit agreement is submitted.~~]

(b) A trust agreement forming a unit must contain all required elements of a unit accounting agreement as specified under §2001.431(3) of the Act.

(c) A unit must notify the Commission on a Commission-prescribed form and submit a copy of the executed unit agreement to the Commission prior to operating as a unit.

(d) A unit must notify the Commission of a change in unit membership on a Commission-prescribed form seven calendar days prior to the date the unit membership changes. A copy of the executed amendment to the unit agreement, in accordance with subsection (q) of this section, must be submitted to the Commission within twenty-five calendar days of the effective date of the change.

(e) [~~(d)~~] A unit may appoint a designated agent who must be a natural person.

(1) A designated agent for a unit must complete training required under §2001.107 of the Act every two years on behalf of either the unit or a licensed authorized organization.

(A) If a new designated agent has not completed required training in the past two years, the designated agent must complete a training class within forty-five calendar days of when the unit agreement or amendment to a unit agreement naming the designated agent was signed.

(B) If the designated agent has not completed required training at the time of a unit's notification of a new designated agent, the designated agent must provide written notice to the Commission upon completion of the training.

(2) A bookkeeper may be a business contact for a commercial lessor and a designated agent for an accounting unit provided that the bookkeeper is not employed by the commercial lessor.

(3) A designated agent must provide personal information requested by the Commission on a Commission-prescribed form so that the Commission may conduct a background investigation to determine if the designated agent is an owner, officer or director of a licensed commercial lessor, employed by a commercial lessor or related to a licensed commercial lessor within the second degree by consanguinity or affinity.

(f) [~~(e)~~] The unit member's taxpayer name and number on the unit agreement must match:

(1) the name on the organization's organizing instrument or the name of the organization as stated on its license to conduct bingo; and

(2) the eleven-digit taxpayer number on file with the Commission.

(g) [~~(f)~~] A unit with a unit agreement specifying that a member withdrawing from the unit is entitled to a share of the inventory or payment for the member's share of the inventory must notify the Commission of the method of distribution within twenty-five calendar days of the distribution to the withdrawing member. The notification must contain the amount of payment or the complete list of inventory transferred.

(h) [~~(g)~~] A unit agreement must specify the street address where the records of a dissolved unit will be maintained for the required four year retention period unless the unit agreement specifies that each unit member will receive a copy of the unit records.

(i) [~~(h)~~] For a dissolved unit, the last trustee or member of a unit at the time of dissolution must notify the Commission within twenty-five calendar days of any change in the street address of the unit's records during the required four year retention period.

(j) [~~(i)~~] A unit agreement must be signed by the unit member organization's bingo chairperson or other officer or director.

(k) [~~(j)~~] Organizations may not act as a unit until all member organizations are licensed.

(l) [~~(k)~~] The method a unit uses to apportion net proceeds of the bingo operations among the members of the unit must be consistent with the method a unit uses to ensure compliance with the required disbursements to charity.

(m) [~~(l)~~] A unit agreement must indicate the length of time allowed for the distribution of funds, records, and inventory and allocation of authorized expenses and liabilities on dissolution or withdrawal of one or more members of the unit.

(n) [~~(m)~~] Prior to joining a unit, a licensed authorized organization must provide written notice to the Commission stating whether it will be transferring inventory to the unit.

(o) [~~(n)~~] An organization joining a unit and possessing inventory must provide to the Commission a complete list of the inventory it has transferred to the unit within twenty-five calendar days of joining the unit. It is the responsibility of the organization to ensure that the Commission timely receives the inventory list.

(p) [~~(o)~~] A written inventory of bingo equipment and supplies must include the following:
Figure: 16 TAC §402.205(p)
[~~Figure: 16 TAC §402.205(o)~~]

(q) [~~(p)~~] Apart from a change in unit membership, any [~~Any~~] amendment to any of the contents of a unit agreement requires the unit to submit a form prescribed by the Commission and a copy of the executed amendment to the unit agreement within twenty-five calendar days of the effective date of the change.

(r) [~~(q)~~] Notification of an amendment to a unit agreement must contain:

(1) name of the unit;

(2) effective date of the change;

(3) specific section of the unit agreement being changed;

(4) new terms of the agreement which are in compliance with the Act and the Rules;

(5) signature of the bingo chairperson or other officer or director for each of the current unit members; and

(6) statement which binds the amendment to the original unit agreement creating one document unless the entire unit agreement is re-stated.

(s) [~~(r)~~] A unit must submit to the Commission an amended unit agreement within twenty-five calendar days of the effective date of any change to the Act or the Rules which would affect the agreement's compliance with the new Act or Rules.

(t) [~~(s)~~] If a unit agreement or an amendment to a unit agreement is found to not be in compliance with the Act or the Rules, the unit will have twenty-five calendar days after being notified by the Commission to provide a revised compliant unit agreement or compliant amendment to a unit agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. BOOKS AND RECORDS

16 TAC §402.501

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Lottery Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Lottery Commission (Commission) proposes the repeal of 16 TAC §402.501, Distribution of Proceeds for Charitable Purposes. The purpose of the proposed repeal of the entire administrative rule is to remove the requirement to distribute net proceeds based on a formula which is no longer in effect because of changes to Texas Occupations Code Chapter 2001 brought about by House Bill 1474 of the 81st Session.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed repeal. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the repeal as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed repeal will be in effect, the public benefit anticipated is Charitable Bingo Administrative Rules that are consistent with the requirements of Texas Occupations Code Chapter 2001.

The Commission requests comments on the proposed repeal from any interested person. Comments on the proposed repeal may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, February 16, 2011, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The repeal is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed repeal implements Texas Occupations Code, Chapter 2001.

§402.501. Distribution of Proceeds for Charitable Purposes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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16 TAC §402.501

The Texas Lottery Commission (Commission) proposes new 16 TAC §402.501, Charitable Use of Net Proceeds. The purpose of the proposed new 16 TAC §402.501, Charitable Use of Net Proceeds, is to clarify Texas Occupations Code §2001.454 related to a licensed authorized organization's use of net proceeds for charitable purposes. Specifically, the new rule: (1) at subsection (a) sets forth that net proceeds of conducting bingo and any rental of a premises for same shall be devoted to the exempt purpose under which an organization qualifies as a nonprofit or otherwise authorized organization; (2) at subsection (b) sets forth the circumstances where a licensed authorized organization may not use net proceeds; (3) at subsection (c) addresses donation of funds; and (4) at subsection (d) addresses documentation to substantiate use of proceeds.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated is to provide licensed authorized organizations specific requirements to follow when using net proceeds from the conduct of bingo and lease of bingo premises.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, February 16, 2011, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements Texas Occupations Code, Chapter 2001.

§402.501. Charitable Use of Net Proceeds.

(a) A licensed authorized organization shall devote all net proceeds of conducting bingo and any rental of premises for the conduct of bingo to the exempt purpose under which the organization qualifies as a nonprofit or otherwise authorized organization in accordance with §2001.002 of the Bingo Enabling Act and §501(c) of the Internal Revenue Code.

(b) A licensed authorized organization may not use net proceeds of the conduct of bingo and any rental of premises for the conduct of bingo, directly or indirectly, to inure to the benefit of any private shareholder, individual, officer, governing body or member other than as reasonable compensation for services rendered or if for a cause or deed consistent with its charitable purpose.

(c) A licensed authorized organization is required to ensure that all funds given to another organization, auxiliary, or any other person are used as required in this chapter and the Bingo Enabling Act.

(d) Proceeds will not be considered as used for the charitable purposes of the organization without documentation to substantiate the use of proceeds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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16 TAC §402.502

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.502, Charitable Use of Proceeds. The purpose of the proposed amendments is to specify what documents and records must be maintained by a licensed authorized organization to validate the use of net proceeds for its charitable purposes. Specifically, the amendments: (1) change the name of the rule from "Charitable Use of Proceeds" to "Charitable Use of Net Proceeds Recordkeeping"; (2) change subsection (a)(1) to read, "a copy of the organization's organizing documents"; (3) delete subsection (a)(2); add a new subsection (a)(3) regarding IRS Form 990; (4) delete subsection (b); add a new paragraph (1) to newly relettered subsection (c) with regard to documenta-

tion for all proceeds used for charitable purposes; (5) delete the existing subsection (d)(2); (6) add new paragraphs (3) - (10) to newly relettered subsection (c) with regard to account documentation; (7) add new paragraph (11) to newly relettered subsection (c) with regard to reimbursement records; and (8) delete existing subsections (d)(4), (e), and (f).

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is to provide specific information as to what the minimum documentation a licensed authorized organization is required to maintain, and what information it is required to provide to the Commission to document its use of net proceeds for its charitable purposes.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, February 16, 2011, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Texas Occupations Code, Chapter 2001.

§402.502. Charitable Use of Net Proceeds Recordkeeping [~~Charitable Use of Proceeds~~].

(a) An organization must maintain and upon request make available to a representative of the Commission or designee:

(1) a copy of the organization's organizing documents; [~~a complete copy of the application for exemption, either I.R.S. Form 1023 for 501(c)(3) organizations or I.R.S. Form 1024 for other nonprofits, which provides a full description of the purposes and the activities of the organization in relation to the exempt status filed with the Internal Revenue Service;~~]

[~~(2) a letter of good standing from the parent organization, if applicable, copy of the organization's Articles of Incorporation, Articles of Association, Trust Indenture, Constitution; or~~]

(2) [~~(3)~~] other enabling documents, [~~document and~~] any amendments and any adopted bylaws which provide in writing the specific cause, deed or activity that is consistent with the organization's purposes and objectives for which bingo net proceeds will be used; and [~~.~~]

(3) a copy of the applicant organization's four most recently filed Internal Revenue Service Form 990, if applicable.

[~~(b) Organizations Licensed must furnish with their application to conduct bingo:~~]

[~~(1) a copy of the application for exemption, I.R.S. Form 1023 for 501(c)(3) or I.R.S. Form 1024 for non-profits;~~]

[~~(2) a conformed copy of the organization's Articles of Incorporation, Articles of Association, Trust Indenture, Constitution; or~~]

[~~(3) other enabling documents and any amendments and any adopted bylaws and provide in writing the specific cause, deed or activity that is consistent with the organization's purposes and objectives for which bingo net proceeds will be used.~~]

(b) [~~(c)~~] The Commission may request supplemental information from an organization [~~Nothing in this rule precludes the Commission from requesting supplemental information~~] in order to substantiate compliance with the Bingo Enabling Act, §2001.454.

(c) [~~(d)~~] Record Keeping:

(1) In accordance with the Bingo Enabling Act, the licensed authorized organization must have documentation for all proceeds used for charitable purposes to substantiate the use of the funds for purposes consistent with the exempt purposes of the licensed authorized organization.

(2) [~~(1)~~] All distributions for charitable purposes must be made from the bingo checking account. A distribution made from the bingo checking account into another account maintained by the organization must be substantiated with documentation and used for a cause, deed, or activity dedicated to the charitable purposes of the organization consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization.

(3) Accounting units must make distributions for charitable purposes from the unit bingo checking account to the unit member. The unit member must maintain sufficient documentation to verify the disbursed funds were used for its charitable purposes.

(4) A licensed authorized organization must maintain bank statements, canceled checks and deposits slips or images of them, and bank reconciliations for all accounts, including use of proceeds accounts, to which it deposits charitable distributions from the proceeds of bingo.

(5) A licensed authorized organization must maintain documentation for all charitable distributions made to individuals or other organizations. These include:

(A) the complete name, address, phone number, and contact person for the individual or organization receiving the donation; and

(B) an invoice, receipt, thank you note, or other written acknowledgement of the distribution including the date and amount of the donation.

(6) A licensed authorized organization must maintain documentation for all charitable distributions used for its exempt purposes. Documentation includes:

(A) invoices, receipts, or other proof of payment for actual expenses incurred for these purposes; and

(B) calendars, floor plans, or other information used to pro-rate any expenses where only a portion of the expense is considered a legitimate exempt use of charitable distributions.

(7) A licensed authorized organization must maintain documentation for all charitable distributions as to how the use of the funds relates to the cause, deed, or activity dedicated to the charitable purposes of the organization consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization.

(8) A licensed authorized organization must maintain minutes of any meeting where the use of bingo proceeds or other activities related to the conduct of bingo.

(9) An organization transferring funds to its bingo account in accordance with §2001.451 of the Act must maintain documentation showing that the transferred funds were not originally bingo proceeds.

~~[(2) A licensed authorized organization must submit quarterly, on a form prescribed by the Commission, a list of the charitable distributions made by the organization during the quarter.]~~

(10) [~~(3)~~] A licensed authorized organization must maintain for four years [~~All~~] records to substantiate the use of net proceeds [~~must be maintained for a period of four years~~].

(11) Reimbursement or direct payment for member or employee travel expenses will only be considered as used for the charitable purposes of the organization if the following records are provided to the Commission upon request:

(A) the itinerary of a seminar, convention, or retreat showing that the purpose of the seminar, convention, or retreat was primarily to discuss the charitable functions and purposes consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization; and

(B) the original or true and correct copies of receipts and cancelled checks showing the date and amount of the contribution for actual out-of-pocket reasonable or necessary expenses such as hotel, airline tickets, meals, etc., and the corresponding request for payment or reimbursement maintained by the organization.

~~[(4) Records required by the Commission as supporting documentation of use of net proceeds made by the licensed authorized organization may include one or more of the following: annual reports; treasurers reports; historian records; balance sheets; accountants work papers; time cards; meeting minutes; committee minutes; canceled checks; letters of acknowledgment; newspaper articles; publications; invoices; receipts; correspondence file; reports to governing parent organizations; flyers, pamphlets, brochures; advertisement; log, schedule or calendar; licensed authorized organizations monthly bulletins; criteria for soliciting applicants awarding scholarships; IRS Form 990; IRS Form 940 and 941; and IRS examination reports.]~~

~~[(e) A use of net proceeds, which would not be considered as a cause, deed, or activity dedicated to the charitable purposes of the organization and not consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization, are any use of proceeds which:]~~

~~[(1) inures to the benefit of any private shareholder, individual, officers, governing body or member other than as reasonable compensation for services rendered;]~~

~~[(2) has no documentation to substantiate the use of net proceeds; or]~~

~~[(3) does not further the organization's cause, deed or activity consistent with the federal tax exempt application or other written purposes furnished to the Commission that are consistent with the organization's tax exemption.]~~

~~[(f) Reimbursement or direct payment for member or employee travel expenses. Reimbursement or direct payment for member or employee travel expenses will only be considered a cause, deed, or activity dedicated to the charitable purposes and consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization if the following records are provided to the Commission upon request:]~~

~~[(1) the itinerary of the seminar, convention, or retreat showing that the purpose of the seminar, convention, or retreat was primarily to discuss the charitable functions and purposes consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization; and]~~

~~[(2) the original receipts and cancelled checks, or true and correct copies of the same, showing the date and amount of the contribution for actual out-of-pocket reasonable and necessary expenses such as hotel, airline tickets, meals, etc. and the corresponding request for payment or reimbursement maintained by the organization.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §402.604

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.604, Delinquent Purchaser. The purpose of the proposed amendments is to clearly set forth for licensees the process and timelines to follow related to payments for the sale or lease of bingo supplies and equipment made by licensed authorized organizations on the delinquent purchaser list. Specifically, the amendments: (1) add new language to subsection (f) regarding the Delinquent Purchaser List; and (2) add new paragraphs (1) - (4) regarding immediate payment, deposit requirements, adequate funds, and deactivation requirements.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory

Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is to provide to licensees the process, timelines and requirements of immediate payment for the sale or lease of bingo supplies and equipment to licensed authorized organizations on the delinquent purchaser list.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, February 16, 2011, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Texas Occupations Code, Chapter 2001.

§402.604. Delinquent Purchaser.

(a) - (e) (No change.)

(f) Before the sale or lease of any equipment or supplies, a manufacturer or distributor must determine [~~confirm~~] whether the intended purchaser is on the Delinquent Purchaser List. If a purchaser is on the Delinquent Purchaser List, a manufacturer or distributor may provide bingo equipment or supplies only upon terms requiring immediate payment by the purchaser. Any licensee or unit on the Delinquent Purchaser List must provide immediate payment for [~~upon delivery of~~] the equipment or supplies.

(1) Immediate payment is:

(A) for purchased equipment and supplies, payment upon delivery; and

(B) for leased bingo equipment or supplies, payment received by the seller within five business days of the issuance of the weekly bill.

(2) A manufacturer or distributor who receives a check for payment from a licensee or unit listed on the Delinquent Purchaser list must deposit the check into a bank account within three business days of the receipt of the payment.

(3) The licensee or unit must have adequate funds to cover the check for payment in its bingo account on the date the check is initially presented for payment.

(4) If the manufacturer or distributor does not timely receive payment for leased bingo equipment, the manufacturer or distributor must within 24 hours deactivate the bingo equipment for which payment has not been received.

(g) - (n) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100277
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 344-5012

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 505. THE BOARD

22 TAC §505.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.10, concerning Board Committees.

The amendment to §505.10 will reflect the consolidation of two (2) Technical Standards Committees into one (1) committee.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be an understanding of the Board committee structure and the responsibilities of the committee.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule amendment affects only Board structure and does not affect the activities of the public.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must

be received at the Board no later than noon on March 4, 2011. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§505.10. Board Committees.

(a) Committee appointments. Appointments to standing committees and ad hoc committees shall be considered annually by the board's presiding officer to assist in carrying out the functions of the board under the provisions of the [~~Public Accountancy~~] Act. Committee appointments shall be made by the presiding officer for a term of two years but may be terminated at any point by the presiding officer. Committee members may be re-appointed at the discretion of the presiding officer. The board's presiding officer shall be an ex officio member of each standing committee and ad hoc committee and chair of the executive committee.

(b) Committee actions. The actions of the committees are recommendations only and are not binding until ratification by the board at a regularly scheduled meeting.

(c) Committee meetings. Committee meetings shall be held at the call of the committee chair, and a report to the board at its next regularly scheduled meeting shall be made by such chair or, in the absence of the chair, by another board member serving on the committee.

(d) Vacancies. If for any reason a vacancy occurs on a committee, the board's presiding officer may appoint a replacement in accordance with subsection (a) of this section.

(e) Standing committee structure and charge to committees. The standing committees shall consist of policy-making committees and working committees comprised of the following individuals and shall be charged with the following responsibilities.

(1) The executive committee shall be a policy-making committee comprised of the board's presiding officer, assistant presiding officer, secretary, treasurer, immediate past presiding officer of the board if still serving on the board, and at least one other officer elected by the board. The executive committee [~~Executive Committee~~] shall also be the board's audit committee. The executive committee may act on behalf of the full board in matters of urgency, or when a meeting of the full board is not feasible; the executive committee's actions are subject to full board ratification at its next regularly scheduled meeting. The functions of the executive committee shall be to advise, consult with, and make recommendations to the board concerning matters requested by the board's presiding officer, including:

(A) litigation;

(B) emergency suspensions pursuant to board rule §519.43 of this title (relating to Emergency Suspension);

(C) proposed changes in the board rules of professional conduct (the rules);

(D) amendments to the Act;

(E) responses/positions relating to papers, reports, and other submissions from national associations or boards;

(F) legislative oversight, including, but not limited to, budget, performance measures, proposed changes in legislation affecting the board, and computer utilization; and

(G) special issues.

(2) The continuing professional education committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the mandatory continuing professional education program as it relates to reporting and attendance requirements, registration and monitoring of continuing professional education sponsors, disciplinary actions, reporting forms, and office procedures;

(B) investigations of sponsor compliance with the terms of the sponsor agreements, including the related recordkeeping requirements;

(C) the results of monitoring continuing professional education courses for the purpose of evaluating the facilities, course content as presented, and the adequacy of the course presenter(s);

(D) any significant deficiencies observed in carrying out subparagraphs (B) and (C) of this paragraph; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the mandatory continuing professional education program as it relates to licensees and to relations with sponsors of continuing professional education.

(3) The qualifications committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the educational qualifications of an applicant for the Uniform Certified Public Accountant Examination in accordance with Chapter 511, Subchapter C of this title (relating to Educational Requirements) and courses that may be used to meet the education requirements to take the examination;

(B) the administration, security, discipline, and other aspects of the conduct of the Uniform Certified Public Accountant Examination in Texas;

(C) the work experience qualifications of an applicant for the certified public accountant certificate in accordance with §§511.121 - 511.124 [§§~~511.121 through~~ 511.124] of this title (relating to Experience Requirements); and/or

(D) where applicable, the equivalency examination measuring the professional competency of an applicant for a CPA certificate by reciprocity; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the qualifications process.

(4) The licensing committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) applications for certification, registration, and licensure;

(B) requests or applications for reinstatement of any certificate, registration, or license which the board previously has revoked, suspended, or refused to renew; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies as they relate to the licensing process.

(5) The behavioral enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) study complaints involving suspected violations of the Act and the board's rules and make recommendations to the board as appropriate;

(B) follow up on board orders to insure that certificate or registration holders and others adhere to sanctions prescribed by or agreements with the board; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the behavioral restraints of the rules and the Act.

(6) The technical standards review [~~I committee and the technical standards review II~~] committee shall be a working committee [~~committees each~~] comprised of at least two board members, one of whom shall serve as chair, assisted by at least three non-board members who shall serve in an advisory capacity. The committee [~~committees~~] shall:

(A) study complaints from any source involving suspected violations of the technical standards included in the rules and shall make recommendations to the board or executive director as appropriate;

(B) follow up on board orders to insure that certificate or registration holders and others adhere to sanctions prescribed by or agreements with the board; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to enforcement of technical standards.

(7) The peer review committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) conduct a periodic review and evaluation of reports publicly filed with the State of Texas (or any board, commission, or agency thereof) and of each of the various types of reports, as defined by board rule, of each practice unit, as defined by board rule, which is engaged in the practice of public accountancy in the State of Texas;

(B) refer to the technical standards review committee egregious substandard reports issued by practice units for which educational rehabilitation has not been effective; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the peer review program.

(8) The board rules committee shall be a policy-making committee comprised of at least three board members, one of whom shall serve as chair. The committee shall make recommendations to the board concerning the board's rules, opinions and policies. All working committees shall refer proposed changes to the board's rules, opinions and policies to the rules committee for consideration for recommendation to the board.

(9) The peer assistance oversight committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall oversee the peer assistance program administered by the Texas Society of Certified Public Accountants as required under the Texas Health and Safety Code, §467.001(1)(B), and insure that the minimum criteria as set out by the Department of State Health Services are met. It shall make recommendations to the board and the TSCPA regarding modifications to the program and, if warranted, refer cases to other board committees for consideration of disciplinary or remedial action by the board. The committee shall report to the board on a semi-annual basis, by case number, on the status of the program.

(10) The constructive enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by non-board CPA members. At least one Committee member shall be a public member of the board. The committee shall approve the constructive enforcement program, coordinate its activities with board committees and staff, and supervise the training of constructive enforcement advisory committee members. A staff attorney of the board shall supervise the day to day administration of the constructive enforcement program and activities of the committee's non-board members on behalf of the committee chairman. The committee shall:

(A) investigate matters forwarded to the committee from any other board committee or board staff in accordance with board instruction and policy;

(B) prepare, as appropriate, investigative reports regarding each referred matter;

(C) inform referring board committees or board staff of the results of its investigations;

(D) inform the appropriate committee when possible violations of board rules and the Public Accountancy Act are observed; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the constructive enforcement program.

(11) The Fifth-Year Accounting Students Scholarship Program advisory committee was created in §901.657 of the Act and con-

sists of eight members appointed by the board for the purpose of advising the board on how scholarships under the Fifth-Year Accounting Students Scholarship Program should be established and administered; the amount of money needed to adequately fund the scholarships and the maximum amount that may be awarded in any given year to an individual student; and any priorities among the factors of financial need, ethnic or racial minority status, and scholastic ability and performance.

(f) Ad hoc advisory committees. Ad hoc advisory committees may be established by the board's presiding officer and members and advisory members appointed as appropriate.

(g) Policy guidelines. All advisory committee members performing any duties utilizing board facilities and/or who have access to board records, shall conform and adhere to the standards, board rules, and personnel policies of the board as described in its personnel manual and to the laws of the State of Texas governing state employees.

(h) Conflicts of interest. To avoid a conflict of interest or the appearance of a conflict of interest, no committee member may provide a report or expert testimony for or otherwise advocate on behalf of a complainant or a respondent in a disciplinary matter pending before the board while serving on a standing committee of the board. A Committee member is not in violation of this rule by reason of testimony given or a report prepared as part of a litigation support engagement in another forum being considered by a committee of the board in an enforcement action; provided however, the board's rules on recusal of that committee member apply.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2011.

TRD-201100234
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 305-7842

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER C. GUIDELINES FOR PROFESSIONAL THERAPEUTIC SERVICES AND CODE OF ETHICS

22 TAC §§801.42, 801.55, 801.56

The Texas State Board of Examiners of Marriage and Family Therapists (board) proposes an amendment to §801.42, and new §801.55 and §801.56, concerning the licensure and regulation of marriage and family therapists who serve as parent coordinator and parent facilitator.

BACKGROUND AND PURPOSE

The proposal is required by House Bill (HB) 1012, 81st Legislature, Regular Session, 2009, amending Family Code, Chapter 153, which requires certain occupational licensing boards to promulgate rules related to the provision of parenting coordination and parenting facilitation services. The proposed amendment and new rules modify an existing rule to conform to the new sections, reflecting the guidelines for professional therapeutic services. Parent coordinators, appointed in high conflict situations, report to the court only whether parent coordination should continue. Parent facilitators are persons appointed by the court to aid the parties and the court in resolving parenting issues, but may report to the court recommendations regarding particular issues between the parties, but not recommendations regarding custody or visitation.

SECTION-BY-SECTION SUMMARY

The amendment to §801.42(19) replaces an existing regulatory reference to "parenting coordinator," with "parenting facilitator," in accordance with HB 1012 and Family Code, Chapter 153. The new §801.55 and §801.56 promulgate rules related to the provision of parenting coordination and parenting facilitation services. The board delineates between these two types of practice and articulates statutory requirements for implementation in professional marriage and family therapy practice.

FISCAL NOTE

Carol Miller, LMSW-AP, Executive Director, has determined that for each of the first five years the sections are in effect, there will not be fiscal implications to the state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Miller has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Miller has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the effective licensing and regulation of marriage and family therapists.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This

proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Carol Miller, LMSW-AP, Executive Director, Texas State Board of Examiners of Marriage and Family Therapists, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347, or by email to mft@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

STATUTORY AUTHORITY

The amendment and new rules are proposed under Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendment and new rules affect Texas Occupations Code, Chapter 502.

§801.42. Professional Therapeutic Services.

The following are professional therapeutic services which may be provided by a Licensed Marriage and Family Therapist or a Licensed Marriage and Family Therapist Associate:

(1) - (18) (No change.)

(19) activities under the [~~Texas~~] Family Code, Chapter 153, Subchapter K, pertaining to parenting plan and parenting facilitator [~~coordinator~~];

(20) - (22) (No change.)

§801.55. Parenting Coordination.

(a) In accordance with the Family Code, §153.601(3), "parenting coordinator" means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described in the Family Code, §153.606, in a suit; and

(2) who:

(A) is appointed under Family Code, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion, or on a motion or agreement of the parties, to assist parties in resolving parenting issues through confidential procedures; and

(B) is not appointed under another statute or a rule of civil procedure.

(b) A licensee who serves as a parent coordinator is not acting under the authority of a license issued by the board, and is not engaged in the practice of marriage and family therapy. The services provided by the licensee who serves as a parent coordinator are not within the jurisdiction of the board, but rather the jurisdiction of the appointing court.

(c) A licensee who serves as a parent coordinator has a duty to provide the information in subsection (b) of this section to the parties to the suit.

(d) Records of a licensee serving as a parenting coordinator are confidential under the Civil Practices and Remedies Code, §154.073. Licensees serving as a confidential parenting coordinator shall comply with the Civil Practices and Remedies Code, Chapter 154, relating to the release of information.

(e) A licensee shall not provide marriage and family therapy services to any person while simultaneously providing parent coordination services. The foregoing rule shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

§801.56. Parenting Facilitation.

(a) In accordance with House Bill 1012, 81st Legislature, Regular Session, 2009, and Family Code, Chapter 153, this section establishes the practice standards for licensees who desire to serve as parenting facilitators.

(b) In accordance with the Family Code, §153.601(3-a), a "parenting facilitator" means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described by the Family Code, §153.6061, in a suit; and

(2) who:

(A) is appointed under Family Code, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion, or on a motion or agreement of the parties, to assist parties in resolving parenting issues through procedures that are not confidential; and

(B) is not appointed under another statute or a rule of civil procedure.

(c) Notwithstanding any other provision of this chapter, licensees who desire to serve as parent facilitators shall comply with all applicable requirements of the Family Code, Chapter 153, and this section. Licensees shall also comply with all requirements of this chapter unless a provision is clearly inconsistent with the Family Code, Chapter 153, or this section.

(d) In accordance with the Family Code, §153.6102(e), a licensee serving as a parenting facilitator shall not provide other marriage and family therapy services to any person while simultaneously providing parent facilitation services. The foregoing rule shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

(e) In accordance with the Family Code, §153.6101(b)(1), a licensed marriage and family therapist associate shall not serve as a parent facilitator.

(f) A licensee serving as a parenting facilitator utilizes child-focused alternative dispute resolution processes, assists parents in implementing their parenting plan by facilitating the resolution of disputes in a timely manner, educates parents about children's needs, and engages in other activities as referenced in the Family Code, Chapter 153.

(g) A licensee serving as a parent facilitator shall assist the parties involved in reducing harmful conflict and in promoting the best interests of the children.

(h) A licensee serving as a parenting facilitator functions in four primary areas in providing services.

(1) Conflict management function. The primary role of the parenting facilitator is to assist the parties to work out disagreements regarding the children to minimize conflict. To assist the parents in

reducing conflict, the parenting facilitator may monitor the electronic or written exchanges of parent communications and suggest productive forms of communication that limit conflict between the parents.

(2) Assessment function. A parenting facilitator shall review applicable court orders, including protective orders, social studies, and other relevant records to analyze the impasses and issues as brought forth by the parties.

(3) Educational function. A parenting facilitator shall educate the parties about child development, divorce, the impact of parental behavior on children, parenting skills, and communication and conflict resolution skills.

(4) Coordination/case management function. A parenting facilitator shall work with the professionals and systems involved with the family (for example, mental health, health care, social services, education, or legal) as well as with extended family, stepparents, and significant others as necessary.

(i) A licensee serving as a parent facilitator shall be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parent facilitator shall adhere to protection orders, if any, and take reasonable measures to ensure the safety of the participants, the children and the parent facilitator, while understanding that even with appropriate precautions a guarantee that no harm will occur can be neither stated nor implied.

(j) In order to protect the parties and children in domestic violence cases involving power, control and coercion, a parenting facilitator shall tailor the techniques used so as to avoid offering the opportunity for further coercion.

(k) A licensee serving as a parent facilitator shall be alert to the reasonable suspicion of substance abuse by parents or children, as well as mental health impairment of a parent or child.

(l) A licensee serving as a parenting facilitator shall not provide legal advice.

(m) A licensee serving as a parenting facilitator shall serve by written agreement of the parties and/or formal order of the court.

(n) A licensee serving as a parenting facilitator shall not initiate providing services until the licensee has received and reviewed the fully executed and filed court order or the signed agreement of the parties.

(o) A licensee serving as a parenting facilitator shall maintain impartiality in the process of parenting facilitation. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

(p) A licensee serving as a parenting facilitator:

(1) shall terminate or withdraw services if the licensee determines the licensee cannot act in an impartial or objective manner;

(2) shall not give or accept a gift, favor, loan or other item of value from any party having an interest in the parenting facilitation process;

(3) shall not coerce or improperly influence any party to make a decision;

(4) shall not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the parenting facilitator process; and

(5) shall not accept any engagement, provide any service, or perform any act outside the role of parenting facilitation that would compromise the facilitator's integrity or impartiality in the parenting facilitation process.

(q) A licensee serving as a parenting facilitator may make referrals to other professionals to work with the family, but shall avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or similar remuneration shall be given or received by a licensee for parenting facilitation or other professional referrals.

(r) A licensee serving as a parenting facilitator should attempt to bring about resolution of issues by agreement of the parties; however, the parenting facilitator is not acting in a formal mediation role. An effort towards resolving an issue, which may include therapeutic, mediation, education, and negotiation skills, does not disqualify a licensee from making recommendations regarding any issue that remains unresolved after efforts of facilitation.

(s) A licensee serving as a parenting facilitator shall communicate with all parties, attorneys, children, and the court in a manner which preserves the integrity of the parenting facilitation process and considers the safety of the parents and children.

(t) A licensee serving as a parenting facilitator:

(1) may meet individually or jointly with the parties, as deemed appropriate by the parenting facilitator, and may interview the children;

(2) may interview any individuals who provide services to the children to assess the children's needs and wishes; and

(3) may communicate with the parties through face-to-face meetings or electronic communication.

(u) A licensee serving as a parenting facilitator shall, prior to the beginning of the parenting facilitation process and in writing, inform the parties of:

(1) the limitations on confidentiality in the parenting facilitation process; and

(2) the basis of fees and costs and the method of payment, including any fees associated with postponement, cancellation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.

(v) Information obtained during the parenting facilitation process shall not be shared outside the parenting facilitation process except for professional purposes, as provided by court order, by written agreement of the parties, or as directed by the board.

(w) In the initial session with each party, a licensee serving as a parenting facilitator shall review the nature of the parenting facilitator's role with the parents to ensure that they understand the parenting facilitation process.

(x) A licensee serving as a parenting facilitator:

(1) shall comply with all mandatory reporting requirements, including but not limited to Family Code, Chapter 261, concerning abuse or neglect of minors;

(2) shall report to law enforcement or other authorities if they have reason to believe that any participant appears to be at serious risk to harm themselves or a third party;

(3) shall maintain records necessary to support charges for services and expenses, and shall make a detailed accounting of those charges to the parties and their counsel, if requested to do so;

(4) shall maintain notes regarding all communications with the parties, the children, and other persons with whom they speak about the case; and

(5) shall maintain records in a manner that is professional, legible, comprehensive, and inclusive of information and documents that relate to the parenting facilitation process and that support any recommendations made by the licensee.

(y) Records of a licensee serving as a parenting facilitator are not mental health records and are not subject to the disclosure requirements of Health and Safety Code, Chapter 611. At a minimum, records shall be maintained for the period of time described in §801.48(e) of this title (relating to Record Keeping, Confidentiality and Release of Records and Required Reporting), or as otherwise directed by the court.

(z) Records of a licensee serving as a parenting facilitator shall be released on the request of either parent, as directed by the court, or as directed by the board.

(aa) Charges for parenting facilitation services shall be based upon the actual time expended by the parenting facilitator, or as directed by the written agreement of the parties, and/or formal order of the court.

(bb) All fees and costs shall be appropriately divided between the parties as directed by the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(cc) Fees may be disproportionately divided fees if one parent is disproportionately creating a need for services and if such a division is outlined in the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(dd) Services and activities for which a licensee serving as a parenting facilitator may charge include time spent interviewing parents, children and collateral sources of information; preparation of agreements, correspondence, and reports; review of records and correspondence; telephone and electronic communication; travel; court preparation; and appearances at hearings, depositions and meetings.

(ee) The minimum training for a licensee serving as a parent facilitator that is required by the Family Code, §153.6101(b), and is determined by the court is:

(1) eight hours of family violence dynamics training provided by a family violence service provider;

(2) 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court;

(3) 24 classroom hours of training in the fields of family dynamics, child development, family law; and

(4) 16 hours of training in the laws and board rules governing parent coordination and facilitation, and the multiple styles and procedures used in different models of service.

(ff) A licensee serving as a parenting facilitator:

(1) shall complete minimum training as required by the Family Code, §153.6101, as determined by the appointing court;

(2) shall have extensive practical experience with high conflict or litigating parents;

(3) shall complete and document upon request advanced training in family dynamics, child maltreatment, co-parenting, and high conflict separation and divorce; and

(4) shall regularly complete continuing education related to co-parenting issues, high-conflict families and the parenting coordination and facilitation process.

(gg) A licensee serving as a parent facilitator shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the licensee's skill or expertise.

(hh) Since parenting facilitation services are addressed under multiple titles in different jurisdictions nationally, acceptability of training to meet the requirements of subsection (cc) of this section is based on functional skills taught during the training rather than the use of specific titles or names.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100248
Sandra DeSobe
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.67

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Insurance proposes the repeal of §7.67, concerning the requirements for filing the 2004 quarterly and annual statements, other reporting forms, and electronic data filings with the National Association of Insurance Commissioners (NAIC). The section is proposed for repeal because the Department is proposing a new §7.67 to specify the requirements for filing the 2010 annual statements, the 2011 quarterly statements, other reporting forms, and electronic data filings with the Department and the NAIC. The proposed new §7.67 is also published in this issue of the *Texas Register.*

FISCAL NOTE. Danny Saenz, Senior Associate Commissioner, Financial Program, has determined that, for each year of the first five years the repeal of the section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal, and there will be no effect on local employment or local economy as result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz also has determined that, for each year of the first five years the repeal of the section will be in effect, the public benefit anticipated as a result of the repeal will be the elimination of obsolete regulations. There will be no economic cost to any individuals, or insurers

or other Department regulated entities, regardless of size, as a result of the proposed repeal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the Department has determined that this proposed repeal will not have an adverse economic effect on small or micro business carriers because it is simply the repeal of obsolete rules. Therefore, in accordance with the Government Code §2006.002(c), the Department is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 4, 2011, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Danny Saenz, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, oral and written comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The repeal of the section is proposed under the Insurance Code §802.001 and §36.001. Section 802.001 authorizes the Commissioner to change the form of any annual statements required of insurance companies of any kind, as necessary to obtain an accurate indication of the company's condition and method of transacting business. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes in the Insurance Code are affected by this proposed repeal: Chapters 2201, 2210, and 2211 and §§32.041, 421.001, 802.001 - 802.003, 802.051 - 802.056, 841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 844.001 - 844.005, 844.051 - 844.054, 844.101, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.001, 982.002, 982.004, 982.052, 982.101 - 982.104, 982.106, 982.108, 982.110 - 982.112, 982.251 - 982.255, 982.302 - 982.306, 984.153, 984.201, 984.202, 1301.009, 1506.057, 2551.001, and 2551.152.

§7.67. Requirements for Filing the 2004 NAIC Quarterly and 2004 NAIC Annual Statements, Other Reporting Forms, and Electronic Data Filings with the NAIC.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2011.

TRD-201100291
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 463-6327

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28 TAC §7.67

The Texas Department of Insurance (Department) proposes new §7.67, concerning requirements for the filing of the 2010 annual statements, the 2011 quarterly statements, other reporting forms, and electronic data filings with the Department and the National Association of Insurance Commissioners (NAIC). The requirements are applicable to insurance companies, health maintenance organizations (HMOs), nonprofit legal service corporations, the Texas Health Insurance Risk Pool, the Texas FAIR Plan Association, and the Texas Windstorm Insurance Association (TWIA). These insurance companies, HMOs, and other regulated entities are referred to collectively as "carriers" in this proposal.

The carriers will file the annual and quarterly statements and other reporting forms with the Department and/or the NAIC as directed in the proposed rules. The reporting forms include the: (i) 2010 annual statement blanks; (ii) 2011 quarterly statement blanks; (iii) Schedule SIS; (iv) management discussion and analysis; (v) supplemental compensation exhibit; (vi) overhead assessment exemption form for insurance company examination expenses; (vii) analysis of surplus; (viii) separate accounts; (ix) supplemental information for county mutual insurance companies and HMOs; (x) release of contributions; (xi) reserve summary; (xii) inventory of insurance in force; and (xiii) summary of insurance in force. The carriers will use these forms to report their year-end 2010 and the first three quarters of the 2011 calendar year financial condition and business operations and activities. The information provided by the completion of the forms is necessary to allow the Department to monitor the solvency, business activities, and statutory compliance of the carriers. The proposed new section adopts by reference the NAIC 2010 annual statement blanks, the NAIC 2011 quarterly statement blanks, related instructions, and other reporting forms and instructions for reporting the financial condition, business operations and activities of the carriers. The proposed new section also requires the carriers to file such annual and quarterly statements and other reporting forms with the Department and/or the NAIC as directed. Specifically, proposed new §7.67(e)(1)(M) clarifies the requirements for property and casualty carriers to file the management discussion and analysis on or before April 1, 2011.

Also, proposed new §7.67(e)(1)(N) and (O) and (e)(4) clarify and modify the filings requirements for the Texas FAIR Plan Association and the TWIA. Proposed new §7.67(e)(1)(N) and (e)(4) add requirements for the TWIA to: (i) submit annual and quarterly financial statements to the Department that are prepared in accordance with generally accepted accounting principles (GAAP) as prescribed or modified by the Governmental Accounting Standards Board (GASB) or its successors; (ii) submit annual and quarterly financial statements and various supplementals electronically to the NAIC prepared in accordance with statutory accounting principles (SAP); (iii) provide an actuarial opinion to the

Department and electronically to the NAIC on or before March 1, 2011, on the reasonableness of its reserves; and (iv) submit to the Department annually, on or before March 15, 2011, an Actuarial Opinion Summary prepared in accordance with §7.9 of this subchapter (relating to Examination of Actuarial Opinion for Property and Casualty Insurers). These new requirements are necessary to: (i) enhance the Department's ability to exercise regulatory oversight of the TWIA as required by the Insurance Code Chapter 2210; (ii) better assure the availability of TWIA insurance coverage for all eligible persons and properties; and (iii) enhance the TWIA's and the Department's ability to comply with the annual financial report requirements administered by the Texas Comptroller of Public Accounts (Comptroller), relating to the TWIA being deemed a component unit of a statewide reporting entity.

In accordance with the Government Code §2101.011(d) and GASB Nos. 14 and 39, the TWIA has been deemed to be a component unit of a statewide reporting entity for purposes of the annual financial report requirements beginning year-end December 31, 2010. The Comptroller, pursuant to §2101.011(d), has informed the Department that pursuant to the Government Code and the GASB the TWIA is required to provide financial statements for calendar year 2010 prepared in accordance with GAAP as prescribed or modified by the GASB or its successor. Based upon information provided by the Comptroller, the Department anticipates the Comptroller to need the TWIA's GAAP-based annual financial statements for the year ending December 31, 2010, for inclusion in the comprehensive annual financial report for the state of Texas for the fiscal year ending August 31, 2011, as prescribed under the Government Code §403.013.

The requirement for quarterly financial statements to the Department that are prepared in accordance with GAAP as prescribed or modified by the GASB or its successors will provide the Commissioner and the Department with additional tools to fulfill their responsibilities under the Insurance Code Chapter 2210. Under the Insurance Code §2210.008 and §2210.152(2)(G) the Commissioner may adopt rules that are reasonable and necessary to implement the Insurance Code Chapter 2210. The TWIA's board of directors is responsible and accountable to the Commissioner under the Insurance Code §2210.102. The quarterly 2011 GAAP statements will assist the Department in reviewing, analyzing, examining, and evaluating the economic condition and operations of the TWIA throughout the entire calendar year period on a GAAP basis. These additional annual and quarterly reporting requirements would be in addition to the existing requirements to submit annual and quarterly financial statements to the Department prepared in accordance with SAP. The Actuarial Opinion Summary is necessary to facilitate the examination of the actuarial opinion submitted with the TWIA's annual statement. Also, proposed new §7.67(e)(4) adds new electronic filing requirements for the Texas FAIR Plan Association and the TWIA, which are in addition to the paper copy filings of these documents required under proposed new §7.67(e)(1)(N). Under proposed new §7.67(e)(4), the Texas FAIR Plan Association and the TWIA are required to file their respective 2010 Property and Casualty Annual Statements, 2011 Property and Quarterly Statements, and all annual and quarterly supplemental electronic filings together with the related PDF filings (except for electronic Supplemental Compensation Exhibit) with the NAIC in electronic and PDF format in accordance with the NAIC data specifications. The due date for filing the 2010 Property and Casualty Annual Statement is on or before March 1, 2011, for both the Texas FAIR Plan Association and the TWIA, consistent with the filing date for other carriers. The due dates for filing the 2011 Property and Casualty Quarterly Statements are on or before May 15, August 15, and November 15, 2011, respectively, for both the Texas FAIR Plan Association and the TWIA.

The proposed new section also defines terms relevant to the statement blanks and reporting forms and provides the dates by which certain reports are to be filed. Proposed subsection (a) explains the purpose and scope of the section and adopts by reference the forms described in the section. Proposed subsection (b) provides that the term "Texas Edition" refers to the blanks and forms promulgated by the Commissioner. Proposed subsection (c) specifies the hierarchy of laws in the event of a conflict between the Insurance Code, this new section, and other Department regulations and the NAIC instructions specified in the new section. Proposed subsections (d) - (l) describe the forms, instructions and filing requirements for the various types of insurers and other regulated entities. Proposed subsection (m) provides that the Department may request financial reports other than those specified in this section.

The forms and instructions are available for inspection in the office of the Financial Analysis Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, 333 Guadalupe, Tower Number III, Third Floor, Austin, Texas. The NAIC forms and instructions may also be reviewed at www.naic.org. The new section will replace the existing §7.67, which is proposed for repeal and also published in this issue of the *Texas Register.* Existing §7.67 addresses the requirements for the filing of the 2004 quarterly statements and 2004 annual statements.

FISCAL NOTE. Danny Saenz, Senior Associate Commissioner, Financial Program, has determined that, for each year of the first five years the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There will be no effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz also has determined that for each year of the first five years the proposed section is in effect, the public benefits anticipated as a result of enforcing this section are the ability of the Department to provide financial information to the public and other regulatory bodies as requested, and to monitor the financial condition of insurance companies, HMOs, and other regulated entities licensed in Texas to better assure financial solvency.

Existing 28 TAC §7.66 specifies the requirements for the filing of the 2009 annual statements, the 2010 quarterly statements, other reporting forms, and electronic data filings with the Department and the NAIC. Except for some new filing requirements for the TWIA and the Texas FAIR Plan Association, substantially the same requirements in existing §7.66 for the filing of annual statements, quarterly statements, other reporting forms, and electronic data filings with the Department and the NAIC are also included in this proposal. Therefore, the same types of costs that were estimated for compliance with the §7.66 requirements are also estimated for compliance with the requirements in this proposal, with the addition of estimated costs for the new TWIA and the Texas FAIR Plan Association filing requirements. The Department does not anticipate any change in these estimated costs, except for an increase in the estimated costs for the TWIA and the Texas FAIR Plan Association to prepare and submit any new filings required under proposed new §7.67(e)(1)(N) and (O)

and (e)(4), from those estimated for compliance with the §7.66 requirements. Therefore, except for the additional estimated costs to the TWIA and the Texas FAIR Plan Association, the estimated costs described in this proposal are consistent with the estimated compliance costs for the §7.66 requirements, which are re-stated in the Public Benefit/Cost Note and Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses sections of this proposal.

Also, although not strictly required by the Government Code §2006.002(c), the proposed section contains a number of accommodations that will mitigate the impact of proposed §7.67 for certain carriers that, because of their carrier type, are more likely to be small or micro business carriers. Specifically, proposed §7.67(d) provides stipulated premium companies with one additional month to file their annual statements and an additional month to make certain other related filings. Proposed §7.67(e) and (i) authorize a simplified financial statement form for farm mutual insurance companies that write less than $6 million in premium. Proposed §7.67(e) and (i) also do not require farm mutual insurance companies that write less than $6 million in premium to: (i) pay NAIC filings fees; (ii) acquire software to prepare financial statement filings with the NAIC; or (iii) file quarterly financial statements with the Department. Proposed §7.67(j) authorizes a simplified annual financial statement form for statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations; and does not require these types of carriers to: (i) acquire software to prepare financial statement filings with the NAIC; or (ii) file quarterly financial statements with the Department. Under proposed §7.67(k), nonprofit legal service corporations are not required to pay NAIC filings fees or to acquire software to prepare financial statement filings with the NAIC. Under proposed §7.67(l), Mexican casualty insurance companies are not required to pay NAIC filing fees or acquire software to prepare financial statement filings with the NAIC.

The probable economic cost to persons required to comply with the proposed section depends on several factors including the size, type and complexity of the carrier. Each carrier subject to proposed §7.67 is required by statute to provide the Department with various annual reports on its operations. The Insurance Code §802.055 provides that an insurance company shall pay all costs of preparing and furnishing to the NAIC the information required under the Insurance Code §802.052, including any related filing fees. The reports and forms required by this proposal generally request information that is already captured or created by the carrier as necessary to its business operations. Therefore, the additional cost involved generally relates to the transfer of that information from the carrier's records to the required report or form. It is anticipated that a carrier, regardless of size, will utilize employees who are familiar with the records of the carrier and accounting practices in general. Based on information obtained by the Department, such individuals are estimated to be compensated from $17 to $50 per hour.

The Department anticipates that larger business carriers, because of the larger size and relatively more complex operations, will take more time to transfer the required information from their records to the financial forms and reports to be adopted by this proposal. The Department also anticipates that large business carriers will likely compensate staff at the higher end of the salary range. Therefore, based on the Department's experience, the overall labor costs for large business carriers to transfer the required information from their records to the required financial forms and reports will generally be more than the overall labor costs for small or micro business carriers. The overall costs to transfer the information from a carrier's records also may vary based upon factors such as the type of carrier (e.g., life, accident and health, or property and casualty), the nature of the risks insured, and the type of software used by the carrier.

Beginning with the year-end 2010 financial reporting requirements, the TWIA is required by the proposed section to submit to the Department annual and quarterly financial statements prepared in accordance with GAAP, in addition to the prior requirements to submit financial statements prepared in accordance with SAP. The requirement for the TWIA to prepare and submit financial statements prepared in accordance with GAAP is necessary for the TWIA and the Department to comply with financial reporting requirements in the Government Code Chapter 2101, Subchapter, B, relating to a component unit of a statewide reporting entity, which are administered by the Comptroller. The Department anticipates that the TWIA will use existing staff to comply with these requirements, in which case no additional costs to the TWIA are required as a result of this proposal.

If the TWIA determines that it must hire additional staff resources to comply with the Government Code §2101.011(d) and this proposed section, the cost of compliance will relate to the cost of that additional staff's salary and related benefits times the amount of hours necessary to prepare the required GAAP financial statements. The Department anticipates that the number of hours necessary to produce the GAAP financial statements, and thus the TWIA's costs of compliance, will vary significantly depending upon a number of factors, including: (i) the adequacy and accuracy of the TWIA's books and records; (ii) the level of automation of the TWIA's financial reporting systems; (iii) the sufficiency of the TWIA's system of internal control over financial reporting, including whether any unremediated material weaknesses exist; (iv) the number and qualifications of the TWIA's accounting personnel; and (v) whether the financial statements cover a period that includes one or more catastrophic loss events for the TWIA. Based upon these factors, the Department anticipates that the time and cost for the TWIA to prepare a set of GAAP financial statements could vary from 16 to 80 hours. Moreover, the Department anticipates that the TWIA could hire an accountant to prepare these GAAP financial statements at the mean salary rate of $31.63 per hour, as set forth for similar accountant positions in the May 2009 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at http://www.bls.gov/oes/current/oes_tx.htm.

The Department believes that the TWIA has the information necessary to estimate its own compliance costs. Further, the Government Code §2101.011(d) requires the reporting of the financial information for any entity that the Comptroller determines is a component unit of a statewide reporting entity in accordance with GAAP as prescribed or modified by the GASB or its successor. Since the TWIA has been deemed a component unit of a statewide reporting entity under §2101.011(d), any costs to the TWIA for preparing and filing the annual GAAP financial statements with the Department, results from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal.

Most carriers are required under proposed §7.67 to file actuarial opinions on the reasonableness of their reserves with the company's annual statement, and to obtain a corresponding Actuarial Opinion Summary prepared in accordance with §7.9 of this subchapter. Beginning with the 2010 Property and Casualty Annual Statement, the TWIA is similarly required, under proposed

new §7.67(e)(1)(N), to obtain an actuarial opinion on its reserves and a corresponding Actuarial Opinion Summary. In order to obtain the actuarial opinion and Actuarial Opinion Summary in accordance with the proposed section, the TWIA, like other carriers, will need to obtain the services of an actuary who will perform the necessary analysis and prepare the necessary work papers to support expressing an opinion on the reasonableness of the reserves held by the TWIA. The corresponding cost for the TWIA to obtain this actuarial opinion will vary depending on a number of factors, including whether a current employee of the TWIA or an outside consulting firm is utilized to prepare the required actuarial opinion and Actuarial Opinion Summary, the adequacy and accuracy of the books and records maintained by the TWIA, the complexity of the actuarial techniques that are necessary to perform this analysis, the level of legal proceedings related to unresolved claims, and recent storm activity. The Department anticipates that the TWIA will elect to use the services of an existing staff actuary, in which case no additional costs to the TWIA are required as a result of this proposal. If the TWIA elects to use the services of an outside consulting actuary, it will incur actuarial costs to prepare the actuarial opinion and the Actuarial Opinion Summary. The proposed section requires the appointed actuary to prepare an actuarial opinion in accordance with the 2010 Annual Statement Instructions, Property and Casualty. The proposed section also requires the appointed actuary to prepare the Actuarial Opinion Summary in accordance with §7.9. Based upon the factors listed above, the Department anticipates that the time for a consulting actuary to prepare an actuarial opinion and Actuarial Opinion Summary could vary from 50-75 hours. The Department further anticipates that the TWIA could hire an outside consulting actuary to prepare an actuarial opinion and Actuarial Opinion Summary at the mean salary rate of $50.33 per hour, as set forth for similar accountant positions in the May 2009 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at http://www.bls.gov/oes/current/oes_tx.htm. While the TWIA may elect, at its discretion, to incur additional costs, the TWIA controls that decision and the Department believes that such additional costs are not required by the proposed section.

Most carriers are required under proposed §7.67 to file electronic copies of the company's annual statement and quarterly statements with the NAIC. Beginning with the 2010 Property and Casualty Annual Statement and the 2011 Property and Casualty Quarterly Statements, the TWIA and the Texas FAIR Plan Association are required, under proposed §7.67(e)(4), to prepare and file electronic filings with the NAIC, in addition to preparing and filing paper copies of these carriers' annual statements and quarterly statements. The TWIA and the Texas FAIR Plan Association must complete and file the NAIC electronic filings in accordance with the NAIC's annual statement and quarterly statement instructions for property and casualty, and the NAIC data specifications and instructions and shall include PDF format filing. In order to prepare and file the financial statements with the NAIC in accordance with the proposed section, the Department anticipates that the TWIA and the Texas FAIR Plan Association, like other carriers, will need to purchase software. The cost of software used to prepare the financial statements is approximately $2,280 for a single carrier. The cost of software may be greater or less depending on the amount charged by the vendor and any extra services that are agreed to between the carrier and the vendor.

The fees associated with each carrier to file electronically with the NAIC database are estimated to range from $247, for carriers with the smallest premium volume, to $69,428, for carriers with the largest premium volume with a limit for insurer groups of $208,284. Based upon the 2009 premium volume report by the TWIA, the Department estimates this carrier would pay a NAIC filing fee of approximately $7,723. Based upon the 2009 premium volume report by the Texas FAIR Plan Association, the Department estimates this carrier would pay a NAIC filing fee of approximately $3,600. The Insurance Code §802.055 requires an insurance company to pay all costs of preparing and furnishing to the NAIC the information required under the Insurance Code §802.052. Therefore, any costs to an insurance company for preparing and filing the annual statement with the NAIC, including software and filing fee costs, results from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal. The Department anticipates that the cost of compliance as detailed in this Public Benefit/Cost Note will be relatively more significant for carriers licensed in Texas for less than one year. This is due to the additional time required for carrier staff to become familiar with the requirements of this proposal, initial software acquisitions costs, and the need to implement systems to capture the information required to be reflected in the financial statements filed with the Department and the NAIC. Because the Department for many years has routinely required the preparation and filing of substantially similar financial statements, which are also required by this proposal, most of these costs for carriers licensed for one year or more have already been incurred.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the Department has determined that proposed new §7.67 will not have an adverse economic effect on small or micro businesses. As previously stated in the Public Benefit/Cost Note part of this proposal, except for some new filing requirements for the TWIA and the Texas FAIR Plan Association, substantially all of the requirements in existing §7.66, that apply to the most recent annual and quarterly statement filings, are also proposed in this proposal for the filing of the 2010 annual statements, the 2011 quarterly statements, other reporting forms, and electronic data filings with the Department and the NAIC. Therefore, with the exception of the new filing requirements for the TWIA and the Texas FAIR Plan Association, the same types of costs that were identified for compliance by small and micro business carriers for the filings under §7.66 are also identified for small and micro business carriers for compliance with the requirements in this proposal.

Further, the Department does not anticipate any change in the estimated costs for this proposal from those estimated for compliance with the §7.66 filing requirements, except for the estimated cost to the TWIA and the Texas FAIR Plan Association to prepare and file any new paper copy filings with the Commissioner and/or electronic copies of their financial statements with the NAIC under proposed new §7.67(e)(1)(N) and (O) and (e)(4). The Department also does not anticipate any difference in the economic impact on small and micro business carriers from that determined for compliance with the §7.66 filing requirements. Therefore, the Department's economic impact statement and regulatory flexibility analysis for compliance by small and micro businesses with the requirements in this proposal is consistent with the economic impact statement and regulatory flexibility analysis for §7.66.

The Department has determined that this proposal, like the proposal for existing §7.66, contains several requirements that must be analyzed in order to determine costs to small and micro busi-

ness carriers required to comply with this proposal. First, proposed §7.67(a) and (d) - (l) require that each carrier provide the Department with financial reports and related information. Second, proposed §7.67(a) and (d) - (h) require that each carrier make concurrent filings of their financial statement with the NAIC that results in related filing fees. Third, proposed §7.67(a) and (d) - (h) essentially require that each carrier purchase software to prepare its financial statements and make the related filings with the NAIC. Each carrier is required by statute to provide the Department with various annual reports on its operations. As noted in the Public Benefit/Cost Note portion of this proposal, the Insurance Code §802.055 provides that an insurance company shall pay all costs of preparing and furnishing to the NAIC the information required under the Insurance Code §802.052, including any related filing fees. Therefore, any costs to an insurance company for preparing and filing the annual statement with the NAIC, including costs of software and filing fees, results from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal.

Proposed §7.67(a), (d), (e) - (l); Preparation of Financial Statements. As required by the Government Code §2006.002(c), the Department has determined that approximately 75 to 150 of the carriers specified in proposed §7.67(a) are small or micro business carriers that will be required to comply with the requirements in proposed §7.67(d) and (e) - (l) to prepare financial statements that reflect the carriers' condition and to file these statements with the Department and the NAIC. These small or micro business carriers will incur routine costs associated with completing the financial statements.

Also, as required by the Government Code §2006.002(c), the Department has determined that these routine costs will not have an adverse economic effect on the approximately 75 to 150 small or micro business carriers. These routine costs of compliance will vary between large business carriers and small or micro business carriers based upon the carrier's type and size and other factors, including the: (i) character of the carrier's assets; (ii) kinds and nature of the risks insured; (iii) type of software used by the carrier to complete its annual statement; and (iv) employee compensation expenses. The Department's cost analysis and resulting estimated routine costs for carriers in the Public Benefit/Cost Note portion of this proposal are equally applicable to small and micro business carriers. As indicated in the Public Benefit/Cost Note analysis, these routine costs will likely be less for small or micro business carriers, primarily because small or micro business carriers will incur less overall labor costs in transferring information from their records to the required financial forms and reports. This results from their smaller size and relatively less complex operations, which will generally require less time to transfer the information from their records to the financial forms and reports required in this proposal. Small or micro business carriers may also incur relatively lower labor costs on a per hour basis because small or micro business carriers will often compensate staff at the lower end of the salary range.

Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare in addition to an economic impact statement a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Because the Department has determined that the routine costs to comply with this proposal, i.e., preparing the financial forms and reports, will not have an adverse economic effect on small or micro business carriers, the Department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule.

Nevertheless and although not strictly required by the Government Code §2006.002(c), the proposal contains several provisions that will mitigate the impact of proposed §7.67 for certain carriers that, because of their carrier type, are more likely to be small or micro business carriers. Specifically, proposed §7.67(d) provides stipulated premium companies with one additional month to file their annual statements and related filings than the time required for large business carriers. Section 7.67(d) further exempts stipulated premium companies from the requirement that applies to most other life carriers to file quarterly financial statements with the Department, if certain conditions are met. Proposed §7.67(e) and (i) authorize a simplified financial statement form for farm mutual insurance companies that write less than $6 million in premium. Unlike the requirements that apply to all other property and casualty carriers, proposed §7.67(e) and (i) do not require that farm mutual insurance companies that write less than $6 million in premium to file quarterly financial statements with the Department. Proposed §7.67(j) authorizes a simplified financial statement form for statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations. Unlike the requirements that apply to other life carriers, proposed §7.67(j) does not require that quarterly financial statements be filed with the Department by statewide mutual assessment associations, local mutual aid associations, mutual burial associations or exempt associations.

The Department anticipates that the cost of compliance as detailed in the Public Benefit/Cost Note will be relatively more significant for carriers licensed in Texas for less than one year. This is because of the additional time required for the carrier's staff to become familiar with the requirements of the proposal and the need to implement systems to capture the information required to be reflected in the financial statements filed with the Department and the NAIC. Because the Department for many years has routinely required the preparation and filing of substantially similar financial statements, which are also required by the proposal, most of these costs for carriers licensed for one year or more have already been incurred.

Proposed §7.67(a) and (d) - (h); NAIC Filing Fee. As required by the Government Code §2006.002(c), the Department has determined that approximately 50 to 100 of the carriers specified in proposed §7.67(a) are small or micro business carriers that will be required to comply with the requirements in proposed §7.67(d) - (h) to make concurrent financial statement filings with the NAIC. These small or micro business carriers will incur routine costs associated with related filing fees.

Also, as required by the Government Code §2006.002(c), the Department has determined that these routine costs will not have an adverse economic effect on the approximately 50 to 100 small or micro business carriers. The Department's cost analysis and resulting estimated costs for carriers to make concurrent financial statement filings with the NAIC in the Public Benefit/Cost Note portion of this proposal are equally applicable to small or micro business carriers. As indicated in the Public Benefit/Cost Note analysis, these costs of compliance will vary between large business carriers and small or micro business carriers based upon the carrier's premium volume. These fees are on a sliding scale basis and will be less for small or micro business carriers that write smaller amounts of premium and greater for large carriers that write larger amounts of premium. These fees are esti-

mated to range from $247 for carriers with the smallest premium volume, to progressively greater amounts for carriers with the largest premium volume. As examples, a carrier with $100,000 in premium will incur a filing fee of $247; a carrier with $6 million in premium will incur a filing fee of $1,444; and a carrier with $4 billion in premium will incur a filing fee of $69,428. These fees range from .002 of the premium for carriers with the smallest premium volume up to .00002 of the premium for carriers with the highest premium volume. In each instance, the Department believes that costs correspond to a nominal and routine cost of business. Accordingly, these routine costs will be less for small or micro business carriers because of their relatively smaller premium base.

Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare in addition to an economic impact statement a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Because the Department has determined that the routine costs to comply with this proposal, i.e., making concurrent filings with the NAIC, will not have an adverse economic effect on small or micro businesses, the Department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule. Moreover, the Insurance Code §802.055 requires an insurance company to pay all costs of preparing and furnishing to the NAIC the information required under the Insurance Code §802.052, including any related filing fees. Accordingly, the cost to insurance companies of preparing and filing the annual statement with the NAIC results from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal.

Nevertheless and although not strictly required by the Government Code §2006.002(c), the proposed section contains a number of provisions that will mitigate the impact of proposed §7.67 for certain carriers that, because of their carrier type, are more likely to be small or micro business carriers. Specifically, proposed §7.67(e) and (i) do not require farm mutual insurance companies that write less than $6 million in premium to pay these filing fees. Proposed §7.67(j) does not require statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations to pay these filing fees. Proposed §7.67(k) does not require nonprofit legal service corporations to pay these filing fees. Proposed §7.67(l) does not require Mexican casualty insurance companies to pay these filing fees.

Proposed §7.67(a) and (d) - (h); Software Expenses. As required by the Government Code §2006.002(c), the Department has determined that approximately 50 to 100 of the carriers specified in proposed §7.67(a) are small or micro business carriers that will essentially be required by proposed §7.67(d) - (h) to purchase software to prepare their financial statements and make the related filings with the NAIC. These small or micro business carriers will incur routine costs associated with purchasing this software.

Also, as required by the Government Code §2006.002(c), the Department has determined that these routine costs will not have an adverse economic effect on the approximately 50 to 100 small or micro business carriers. The Department's cost analysis and resulting estimated costs for carriers to purchase this software contained in the Public Benefit/Cost Note portion of this proposal are equally applicable to small or micro business carriers. As indicated in the Public Benefit/Cost Note analysis, these costs of compliance may vary based upon a number of factors. The cost of software to prepare the financial statements is approximately $2,280 for a single company. The cost of software may be greater or less depending on the amount charged by the vendor, the type of software needed and any extra services that are agreed to between the company and the vendor.

Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare in addition to an economic impact statement a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Because the Department has determined that the routine costs to comply with this proposal, i.e., the purchase of software, will not have an adverse economic effect on small or micro business carriers, the Department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule. Moreover, the Insurance Code §802.055 requires an insurance company to pay all costs of preparing and furnishing to the NAIC the information required under the Insurance Code §802.052, including any related filing fees. Accordingly, the cost to an insurance company of preparing and filing the annual statement with the NAIC results from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal. Furthermore, each carrier subject to this proposal is required by statute to provide the Department with various annual reports on its operations, and therefore, the related costs result from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal.

Nevertheless and although not strictly required by the Government Code §2006.002(c), the proposed section contains several provisions that will mitigate the impact of proposed §7.67 for certain carriers that, because of their carrier type, are more likely to be small or micro business carriers. Specifically, proposed §7.67(d) exempts stipulated premium companies from the requirement that applies to most other life carriers to file quarterly interim financial statements with the Department, if certain conditions are met. This exemption will lessen the software needs of stipulated premium companies. Proposed §7.67(e) and (i) do not require that farm mutual insurance companies that write less than $6 million in premium to acquire this software and thereby incur the related expense. Proposed §7.67(j) does not require statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations to acquire this software and thereby incur the related expense. Proposed §7.67(k) does not require that nonprofit legal service corporations to acquire this software and incur the related expense. Proposed §7.67(i) does not require Mexican casualty insurance companies to acquire this software and incur the related expense.

Additionally, the Department anticipates that the cost of compliance as detailed in this Public Benefit/Cost Note part of the proposal will be relatively more significant for carriers licensed in Texas for less than one year because of initial software acquisitions costs. Because the Department for many years has routinely required the preparation and filing of substantially similar financial statements, which are also required by the proposal, most of these software costs for carriers licensed for one year or more have already been incurred.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by

this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 4, 2011, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted simultaneously to Danny Saenz, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, oral and written comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new section is proposed under the following provisions of the Insurance Code. Sections 802.001 - 802.003 and §§802.051 - 802.056 authorize the Commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and require certain insurers to make filings with the National Association of Insurance Commissioners. Chapters 2201, 2210, and 2211 and §§841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.004, 982.251 - 982.254, 982.101, 982.103, 984.101 - 984.103, 984.153, 984.201, 984.202, 1301.009, 1506.057, 2210.008, 2210.101, 2210.102, 2210.152, 2551.001, and 2551.152 require the filing of financial reports and other information by insurers and other regulated entities and provide specific rulemaking or regulatory authority to the Commissioner relating to those insurers and other regulated entities.

Sections 982.001, 982.002, 982.004, 982.052, 982.102 - 982.104, 982.106, 982.108, 982.110 - 982.112, 982.201 - 982.204, 982.251 - 982.255, and 982.302 - 982.306 provide the conditions under which foreign and alien insurers are permitted to do business in this state and require foreign and alien insurers to comply with the provisions of the Insurance Code. Sections 844.001 - 844.005, 844.051 - 844.054, and 844.101 specify statutory requirements relating to nonprofit health corporations and authorize the Commissioner to adopt rules to implement the regulation of nonprofit health corporations holding a certificate of authority under the Insurance Code, Title 2, Chapter 844.

Section 2210.008 authorizes the Commissioner to adopt rules in the manner prescribed in the Insurance Code, Chapter 36, Subchapter A, as reasonable and necessary to implement Chapter 2210. Section 2210.101 provides that the board of directors of the Texas Windstorm Insurance Association is responsible and accountable to the Commissioner. Section 2210.102 requires the Commissioner to appoint the board of directors of the Texas Windstorm Insurance Association. Section 2210.152 requires the plan of operation for the Texas Windstorm Insurance Association to provide for the efficient, economical, fair, and nondiscriminatory administration of the Association, and to include provisions as considered necessary by the Department to implement the purposes of Chapter 2210.

Section 2211.057 charges the Commissioner with the authority to supervise the Texas FAIR Plan Association and the inspection bureau. Section 2211.057(1) grants the Commissioner the power to examine the operations of the Texas FAIR Plan Association and the inspection bureau through free access to all books, records, files, papers, and documents related to the operation of the Texas FAIR Plan Association and the inspection bureau. Section 2210.057(4) grants the Commissioner the power to require reports from the Texas FAIR Plan Association concerning the risks the Texas FAIR Plan Association insurers under Chapter 2211 as the Commissioner considers necessary.

Section 421.001 requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance. Section 32.041 requires the Department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: The Insurance Code Chapters 2201, 2210, and 2211 and §§32.041, 421.001, 802.001 - 802.003, 802.051 - 802.056, 841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 844.001 - 844.005, 844.051 - 844.054, 844.101, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.001, 982.002, 982.004, 982.052, 982.101, 982.102, 982.103, 982.104, 982.106, 982.108, 982.110 - 982.112, 982.251 - 982.255, 982.302 - 982.306, 984.153, 984.201, 984.202, 1301.009, 1506.057, 2210.008, 2210.101, 2210.102, 2210.152, 2551.001, and 2551.152.

§7.67. Requirements for Filing the 2010 Annual Statements, the 2011 Quarterly Statements, Other Reporting Forms, and Electronic Data Filings with the Texas Department of Insurance and the NAIC.

(a) Scope. This section specifies the requirements for insurers and other regulated entities for filing the 2010 annual statement, the 2011 quarterly statements, other reporting forms, and electronic data filings with the department and the National Association of Insurance Commissioners (NAIC) necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and certain other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; U.S. branches of alien insurers; Mexican casualty insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; statewide mutual assessment companies; local mutual aid associations; mutual burial associations; exempt associations; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; title insurers; fraternal benefit societies; farm mutual insurers; health maintenance organizations; nonprofit health corporations; nonprofit legal services corporations; the Texas Health Insurance Risk Pool; the

Texas Mutual Insurance Company; the Texas Windstorm Insurance Association; and the Texas FAIR Plan Association. The commissioner adopts by reference the 2010 annual statement blanks, the 2011 quarterly statement blanks, and the related instruction manuals published by the NAIC, and other supplemental reporting forms specified in this section. The forms are available from the Texas Department of Insurance, Financial Analysis Division, Mail Code 303-1A, P.O. Box 149104, Austin, Texas 78714-9104. The NAIC annual and quarterly statement blanks and other NAIC supplemental reporting forms can be printed or filed electronically using annual statement software available from vendors. Insurers and other regulated entities shall properly report to the department and the NAIC by completing, in accordance with applicable instructions, the appropriate paper copy annual and quarterly statement blanks, other reporting forms, and electronic data filings.

(b) Definition. In this section "Texas Edition" refers to the blanks and forms promulgated by the commissioner.

(c) Conflicts with Other Laws. In the event of a conflict between the Insurance Code, any currently existing department rule, form, instructions, or any specific requirement of this section and the NAIC instructions listed in this section, the Insurance Code, the department rule, form, instruction, or the specific requirements of this section shall take precedence and in all respects control.

(d) Filing Requirements for Life, Accident and Health Insurers. Each life; life and accident; life and health; accident; accident and health; mutual life; or life, accident and health insurance company; stipulated premium company; group hospital service corporation; and the Texas Health Insurance Risk Pool shall complete and file the blanks, forms, or electronic data filings as directed in this subsection. This subsection does not apply to entities licensed as health maintenance organizations under the Insurance Code Chapter 843. Insurers specified in this subsection and engaged in business authorized under the Insurance Code Chapter 843 may have additional reporting requirements under subsection (h) of this section. Insurers described under this subsection may elect to file on the 2010 Health Annual Statement for year-end 2010, and on the 2011 Health Quarterly Statement for the three quarters of 2011, if the insurer passes the Health Statement Test as outlined in the "2010 Annual Statement, Health Instructions." If a reporting entity qualifies under this subsection to use the 2010 Health Annual Statement, it must continue to use that annual statement for a minimum of three years or obtain written approval from the department to change to another type of annual statement. Insurers filing the 2010 Life, Accident and Health Annual Statement, the 2011 Life, Accident and Health Quarterly Statements, and the supplemental forms and reports identified in these subsections shall complete filings in accordance with the "2010 Annual Statement Instructions, Life, Accident and Health," and the "2011 Quarterly Statement Instructions, Life, Accident and Health," as applicable. Life insurers meeting the test set forth in this subsection to file the 2010 Health Annual Statement and the supplemental forms and reports identified in these subsections shall complete filings in accordance with the "2010 Annual Statement Instructions, Health," and the "2011 Quarterly Statement Instructions, Health," as applicable. The electronic filings of these forms or reports with the NAIC shall be in accordance with the NAIC data specifications and instructions for electronic filing and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) domestic insurer reports and forms in paper copy to be filed only with the department as follows:

(A) 2010 Life, Accident and Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2011 (stipulated premium companies not subject to the Insurance Code §884.406, April 1, 2011);

(B) 2010 Life, Accident and Health Annual Statement of the Separate Accounts for the 2010 calendar year (required of companies maintaining separate accounts), due on or before March 1, 2011;

(C) 2010 Life, Accident and Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2011. A Texas stipulated premium company, unless specifically requested to do so by the department, is not required to file quarterly data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(D) 2010 Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2011 if the company qualifies as described in this subsection;

(E) 2011 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2011 if the company qualifies as described in this subsection;

(F) all the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions;

(G) Management's Discussion and Analysis, due on or before April 1, 2011;

(H) Statement of Actuarial Opinion, due on or before March 1, 2011 (stipulated premium companies not subject to the Insurance Code §884.406, April 1, 2011). The actuarial opinion shall be prepared in accordance with paragraph (4) of this subsection;

(I) Schedule SIS, due on or before March 1, 2011. This filing is also required if filing a Health Annual Statement, as applicable;

(J) Supplemental Compensation Exhibit, due on or before March 1, 2011 (stipulated premium companies not subject to the Insurance Code §884.406, April 1, 2011). This filing is also required if filing a Health Annual Statement, as applicable;

(K) The Texas Health Insurance Risk Pool shall file the 2010 Health Annual Statement, and the 2011 Quarterly Statements as follows:

(i) 2010 Health Annual Statement with only pages 1 - 6, and Schedule E Part 1, Part 2, and Part 3 to be completed and filed on or before March 1, 2011;

(ii) 2011 Health Quarterly Statements, with only pages 1 - 6, Schedule E, Part 1 - Cash, and Part 2 - Cash Equivalents to be completed and filed on or before May 15, August 15, and November 15, 2011; and

(iii) The Texas Health Insurance Risk Pool is not required to file any reports, diskettes, or electronic data filings with the NAIC;

(L) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2011 (stipulated premium companies not subject to the Insurance Code §884.406, April 1, 2011). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed; and

(M) Analysis of Surplus (Texas Edition) for life, accident and health insurers, due on or before March 1, 2011 (stipulated

premium companies not subject to the Insurance Code §884.406, April 1, 2011).

(2) Foreign companies filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(3) Electronic filings with the NAIC by domestic and foreign insurers:

(A) 2010 Life, Accident and Health Annual Statement electronic filing and PDF filing, due on or before March 1, 2011 (stipulated premium companies not subject to the Insurance Code §884.406, April 1, 2011);

(B) 2010 Life, Accident and Health Annual Statement of the Separate Accounts electronic filing and PDF filing, due on or before March 1, 2011;

(C) 2011 Life, Accident and Health Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2011. A Texas stipulated premium company, unless specifically requested to do so by the department, is not required to file quarterly electronic data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(D) all annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are filed by domestic insurers only with the department in paper copy) due on the dates specified in the forms and instructions; and

(E) Statement of Actuarial Opinion, due on or before March 1, 2011 (stipulated premium companies not subject to the Insurance Code §884.406, April 1, 2011). The actuarial opinion shall be prepared in accordance with paragraph (4) of this subsection.

(4) Statement of Actuarial Opinion required by paragraphs (1)(H) and (3)(E) of this subsection shall be prepared in accordance with the following:

(A) For companies filing the 2010 Life, Accident and Health Annual Statement, the Statement of Actuarial Opinion, attached to the 2010 Life, Accident and Health Annual Statement, must follow the applicable provisions of §§3.1601 - 3.1608 of this title (relating to Actuarial Opinion and Memorandum Regulation), except for companies exempted from the asset adequacy analysis pursuant to §3.1608 of this title. For those companies exempted from the asset adequacy analysis pursuant to §3.1608 of this title, the format provided by instructions 1 - 12 of the "2010 Annual Statement Instructions, Life, Accident and Health," must be followed.

(B) For companies filing the 2010 Health Annual Statement, the Statement of Actuarial Opinion, attached to the 2010 Health Annual Statement, must follow the "2010 Annual Statement Instructions, Health." In addition, for those companies not exempted from the asset adequacy analysis pursuant to §3.1608 of this title, the Statement of Actuarial Opinion must follow the applicable provisions of §§3.1601 - 3.1608 of this title that are not covered in the "2010 Annual Statement Instructions, Health," including those provisions relating to asset adequacy analysis.

(C) Any company required by §3.4505(b)(3)(G) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) to opine on the application of X factors, shall attach this opinion to the 2010 Life, Accident and Health Annual Statement or the 2010 Health Annual Statement, as applicable.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for life, accident and health insurers with the department, on or before March 1, 2011.

(e) Requirements for Property and Casualty Insurers. Each fire; fire and marine; general casualty; fire and casualty; or U.S. branch of an alien insurer; county mutual insurance company; mutual insurance company other than life; Lloyd's plan; reciprocal or inter insurance exchange; domestic risk retention group; life insurance company that is licensed to write workers' compensation; any farm mutual insurance company that filed a property and casualty annual statement for the 2009 calendar year or had gross written premiums in 2010 in excess of $6 million; domestic joint underwriting association; the Texas Mutual Insurance Company; the Texas Windstorm Insurance Association; and the Texas FAIR Plan Association shall complete and file the following blanks, forms, and diskettes or electronic data filings as described in this subsection. The forms and reports identified in this subsection shall be completed in accordance with the "2010 Annual Statement Instructions, Property and Casualty," and the "2011 Quarterly Statement Instructions, Property and Casualty," as applicable. The electronic filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing, as applicable. The filings for insurers described in this subsection are as follows:

(1) domestic insurer reports and forms in paper copy to be filed only with the department as follows:

(A) 2010 Property and Casualty Annual Statement, due on or before March 1, 2011, including the printed investment schedule detail;

(B) 2011 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2011;

(C) 2010 Combined Property/Casualty Annual Statement, due on or before May 1, 2011. This statement is required only for those affiliated insurers that wrote more than $35 million in direct premiums as a group in calendar year 2010, as disclosed in Schedule T of the Annual Statement(s);

(D) all the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions;

(E) Statement of Actuarial Opinion, due on or before March 1, 2011, and prepared in accordance with the "2010 Annual Statement Instructions, Property and Casualty;"

(F) Schedule SIS, due on or before March 1, 2011;

(G) Supplemental Compensation Exhibit, due on or before March 1, 2011;

(H) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2011. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed;

(I) Texas Supplement for County Mutuals (Texas Edition) (required of Texas county mutual insurance companies only), due on or before March 1, 2011;

(J) Texas Supplemental "A" for County Mutuals (Texas Edition) (required of Texas county mutual insurance companies only), due on or before March 1, 2011;

(K) Analysis of Surplus (Texas Edition) for property and casualty insurers except Texas county mutual insurance companies, due on or before March 1, 2011;

(L) Actuarial Opinion Summary prepared in accordance with §7.9 of this subchapter (relating to Examination of Actuarial Opinion for Property and Casualty Insurers);

(M) Management's Discussion and Analysis, due on or before April 1, 2011;

(N) The Texas Windstorm Insurance Association shall complete and file the following:

(i) 2010 Property and Casualty Annual Statement, due on or before March 1, 2011;

(ii) annual financial statements for year-end 2010 prepared in accordance with generally accepted accounting principles as prescribed or modified by the Governmental Accounting Standards Board or its successor, and in compliance with the Government Code §2101.011(d) and any related regulations, guidelines, procedures, or reporting requirements prescribed by the Comptroller of Public Accounts, due on or before March, 1, 2011;

(iii) quarterly financial statements for the first three quarters of calendar year 2011 prepared in accordance with generally accepted accounting principles as prescribed or modified by the Governmental Accounting Standards Board or its successor, due on or before May 15, August 15, and November 15, 2011;

(iv) 2011 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2011;

(v) Statement of Actuarial Opinion, due on or before March 1, 2011, and prepared in accordance with the "2010 Annual Statement Instructions, Property and Casualty;"

(vi) Actuarial Opinion Summary prepared in accordance with §7.9 of this subchapter;

(vii) Management's Discussion and Analysis, due on or before April 1, 2011;

(viii) Supplemental Compensation Exhibit, due on or before March 1, 2011; and

(ix) all the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions, as applicable.

(O) Notwithstanding §5.9927 of this title (relating to Annual and Quarterly Financial Statements), the Texas FAIR Plan Association shall complete and file the following:

(i) 2010 Property and Casualty Annual Statement, due on or before March 1, 2011;

(ii) 2011 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2011;

(iii) Statement of Actuarial Opinion, due on or before March 1, 2011, and prepared in accordance with the "2010 Annual Statement Instructions, Property and Casualty;"

(iv) Actuarial Opinion Summary prepared in accordance with §7.9 of this subchapter;

(v) Management's Discussion and Analysis, due on or before April 1, 2011;

(vi) Supplemental Compensation Exhibit, due on or before March 1, 2011; and

(vii) all the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions, as applicable.

(2) Foreign property and casualty insurers filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(3) Electronic filings by domestic and foreign insurers, except Texas Windstorm Insurance Association and the Texas FAIR Plan Association, to be filed with the NAIC:

(A) 2010 Property and Casualty Annual Statement electronic filing and PDF filing, due on or before March 1, 2011;

(B) 2011 Property and Casualty Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2011;

(C) all annual and quarterly supplemental electronic filings together with the related PDF filings (except for electronic Schedule SIS and Supplemental Compensation Exhibit, required of domestic insurers only) due on the dates specified in the forms and instructions;

(D) electronic combined insurance exhibit, due on or before May 1, 2011;

(E) combined annual statement electronic filing and PDF filing, due on or before May 1, 2011; and

(F) Statement of Actuarial Opinion, due on or before March 1, 2011, and prepared in accordance with the "2010 Annual Statement Instructions, Property and Casualty."

(4) Notwithstanding §5.9927 of this title, electronic filings by the Texas Windstorm Insurance Association and the Texas FAIR Plan Association to be filed with the NAIC:

(A) 2010 Property and Casualty Annual Statement electronic filing and PDF filing, due on or before March 1, 2011;

(B) 2011 Property and Casualty Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2011;

(C) all annual and quarterly supplemental electronic filings together with the related PDF filings (except for electronic Supplemental Compensation Exhibit) due on the dates specified in the forms and instructions, as applicable; and

(D) Statement of Actuarial Opinion, due on or before March 1, 2011, and prepared in accordance with the "2010 Annual Statement Instructions, Property and Casualty."

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that files an application with the department for approval of a policyholder dividend shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the application.

(7) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the department, on or before March 1, 2011.

(f) Requirements for Fraternal Benefit Societies. Each fraternal benefit society shall complete and file the following blanks, forms, and electronic data filings for the 2010 calendar year, and the first three quarters for the 2011 calendar year. The forms and reports identified in this subsection shall be completed in accordance with the "2010 Annual Statement Instructions, Fraternal," and the "2011 Quarterly Statement Instructions, Fraternal," as applicable. The electronic data filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) domestic insurer reports and forms in paper copy to be filed only with the department, as follows:

(A) 2010 Fraternal Annual Statement, including the printed investment schedule detail, due on or before March 1, 2011;

(B) 2010 Fraternal Annual Statement of the Separate Accounts (required of companies maintaining separate accounts), due on or before March 1, 2011;

(C) 2011 Fraternal Quarterly Statements, due on or before May 15, August 15, and November 15, 2011;

(D) all the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions;

(E) Management's Discussion and Analysis, due on or before April 1, 2011;

(F) Statement of Actuarial Opinion, due on or before March 1, 2011, and prepared in accordance with paragraph (4) of this subsection;

(G) Supplemental Compensation Exhibit, due on or before March 1, 2011;

(H) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2011. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed; and

(I) Analysis of Surplus (Texas Edition) for fraternal benefit societies, due on or before March 1, 2011.

(2) Foreign fraternal insurers filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(3) Electronic filings by domestic and foreign insurers to be filed with the NAIC:

(A) 2010 Fraternal Annual Statement electronic filing and PDF filing, due on or before March 1, 2011;

(B) 2010 Fraternal Annual Statement of the Separate Accounts electronic filing and PDF filing, due on or before March 1, 2011;

(C) 2011 Fraternal Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2011;

(D) all annual and quarterly supplemental electronic filings together with the related PDF filings (except for the Supplemental Compensation Exhibit) due on the dates specified in the forms; and

(E) Statement of Actuarial Opinion, due on or before March 1, 2011, and prepared in accordance with paragraph (4) of this subsection.

(4) Statement of Actuarial Opinion required by paragraphs (1)(F) and (3)(E) of this subsection shall be prepared in accordance with the following:

(A) The Statement of Actuarial Opinion, attached to the 2010 Fraternal Annual Statement, must follow the applicable provisions of §§3.1601 - 3.1608 of this title, except for companies exempted from the asset adequacy analysis pursuant to §3.1608 of this title. For those companies exempted from the asset adequacy analysis pursuant to §3.1608 of this title, the format provided by instructions 1 - 12 of the "2010 Annual Statement Instructions, Fraternal," must be followed.

(B) Any company required by §3.4505(b)(3)(G) of this title to opine on the application of X factors, shall attach this opinion to the 2010 Fraternal Annual Statement, as applicable.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for fraternal benefit societies with the department on or before March 1, 2011.

(g) Requirements for Title Insurers. Each title insurance company shall complete and file the following blanks and forms for the 2010 calendar year, and the first three quarters of the 2011 calendar year. The reports and forms identified in this subsection shall be completed in accordance with the "2010 Annual Statement Instructions, Title," and the "2011 Quarterly Statement Instructions, Title," as applicable. The electronic version of the filings with the NAIC identified in this subsection shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) domestic insurer reports and forms in paper copy to be filed only with the department as follows:

(A) 2010 Title Annual Statement, including printed investment schedule details, due on or before March 1, 2011;

(B) 2011 Title Quarterly Statements, due on or before May 15, August 15, and November 15, 2011;

(C) All the paper copies of the annual and quarterly supplements prepared and filed on dates described in the forms and instructions;

(D) Management's Discussion and Analysis, due on or before April 1, 2011;

(E) Statement of Actuarial Opinion, due on or before March 1, 2011;

(F) Supplemental Compensation Exhibit, due on or before March 1, 2011;

(G) Schedule SIS, due on or before March 1, 2011;

(H) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2011. This form is to be filed only by domestic insurance companies that have qualified

pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed; and

(I) Analysis of Surplus (Texas Edition) for title companies, due on or before March 1, 2011.

(2) Foreign companies filing electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(3) Electronic filings with the NAIC by domestic and foreign insurers:

(A) 2010 Title Annual Statement electronic filings and PDF filings, due on or before March 1, 2011;

(B) 2011 Title Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2011;

(C) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed by domestic insurers with the department in paper copy) due on the dates specified in the forms and instructions;

(D) Management Discussion and Analysis, due on or before April 1, 2011; and

(E) Statement of Actuarial Opinion, due on or before March 1, 2011.

(4) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(5) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for title insurers on or before March 1, 2011.

(h) Requirements for Health Maintenance Organizations. Each health maintenance organization licensed pursuant to the Insurance Code Chapter 843 shall complete the 2010 Health Annual Statement, and the 2011 Quarterly Statements. Insurers that are subject to life insurance statutes and are permitted or allowed to do the business of health maintenance organizations shall file the Texas HMO supplement forms as part of their annual and quarterly statement filings. The forms and reports required in this subsection shall be completed in accordance with the "2010 Annual Statement Instructions, Health," and the "2011 Quarterly Statement Instructions, Health," as applicable. The Texas supplemental forms required in this subsection and provided by the department shall be completed in accordance with the instructions on the forms. The electronic data filings with the NAIC shall be in accordance with NAIC data specifications and instructions and shall include PDF format filing. The Texas specific electronic filings regarding HMO data requested by the department shall be filed in accordance with the instructions provided by the department. The filings for insurers described in this subsection are as follows:

(1) domestic and foreign insurer reports and forms in paper copy to be filed only with the department:

(A) 2010 Health Annual Statement, including printed investment schedule detail, due on or before March 1, 2011;

(B) 2011 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2011. With each quarterly filing, include an up-to-date and completed Schedule E, Part 3 - Special Deposits, utilizing the format from the 2010 Health Annual Statement;

(C) Management's Discussion and Analysis, due on or before April 1, 2011; and

(D) Statement of Actuarial Opinion, due on or before March 1, 2011, prepared in accordance with the "2010 Annual Statement Instructions, Health."

(2) domestic insurer reports and forms to be filed with the department:

(A) Supplemental Compensation Exhibit in paper copy only, due on or before March 1, 2011;

(B) Texas Overhead Assessment Exemption Form (Texas Edition) in paper copy only, due on or before March 1, 2011. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed;

(C) Texas HMO Supplement Annual (Texas Edition), in paper copy and electronic filing, containing annual data for calendar year 2010, to be completed according to the instructions provided by the department, due on or before March 1, 2011; and

(D) Texas HMO Supplement Quarterly (Texas Edition), in paper copy and electronic filings, containing quarterly statement data for calendar year 2011, to be completed according to the instructions provided by the department, due on or before May 15, August 15, and November 15, 2011.

(3) electronic filings with the NAIC by domestic and foreign insurers:

(A) 2010 Health Annual Statement electronic filing, and PDF filing, due on or before March 1, 2011;

(B) 2011 Health Quarterly Statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2011;

(C) all annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed by domestic insurers with the department in paper copy) due on the dates specified in the forms and instructions;

(D) Statement of Actuarial Opinion, due on or before March 1, 2011, prepared in accordance with the "2010 Annual Statement Instructions, Health;" and

(E) Management Discussion and Analysis, due on or before April 1, 2011.

(i) Requirements for Farm Mutual Insurers not Subject to the Provisions of Subsection (e) of this Section. Farm mutual insurance companies not subject to subsection (e) of this section shall file the following blanks and forms for the 2010 calendar year with the department only, on or before March 1, 2011:

(1) Annual Statement (Texas Edition);

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed; and

(3) Statement of Actuarial Opinion, unless exempted under §7.31 of this subchapter (relating to Annual Statement Instructions for Farm Mutual Insurance Companies).

(j) Requirements for Statewide Mutual Assessment Associations, Local Mutual Aid Associations, Mutual Burial Associations, and Exempt Associations. Each statewide mutual assessment association,

local mutual aid association, mutual burial association, and exempt association shall complete and file the following blanks and forms for the 2010 calendar year with the department only, on or before April 1, 2011:

(1) Annual Statement (Texas Edition) (exempt companies are required to complete all pages except lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4 - 7);

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed;

(3) Release of Contributions Form (Texas Edition);

(4) 3-1/2 Percent Chamberlain Reserve Table (Reserve Valuation) (Texas Edition);

(5) Reserve Summary (1956 Chamberlain Table 3-1/2 Percent) (Texas Edition);

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year (Texas Edition); and

(7) Summary of Inventory of Insurance in Force by Age and Calculation of Net Premiums (Texas Edition).

(k) Requirements for Nonprofit Legal Service Corporations. Each nonprofit legal service corporation doing business as authorized by a certificate of authority issued under the Insurance Code Chapter 961 shall complete and file the following blanks and forms for the 2010 calendar year with the department only. An actuarial opinion is not required. The following forms are to be filed on or before March 1, 2011:

(1) Annual Statement (Texas Edition); and

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed.

(l) Requirements for Mexican Casualty Insurance Companies. Each Mexican casualty insurance company doing business as authorized by a certificate of authority issued under the Insurance Code Chapter 984, shall complete and file the following blanks and forms for the 2010 calendar year with the department only. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States dollars. The form identified in paragraph (1) of this subsection shall be completed to the extent specified in paragraph (1) of this subsection and in accordance with the "2010 Annual Statement Instructions, Property and Casualty." An actuarial opinion is not required. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The following blanks or forms are to be filed on or before March 1, 2011:

(1) 2010 Property and Casualty Annual Statement; provided, however, only pages 1 - 4, and 104 (Schedule T) are required to be completed;

(2) a copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English);

(3) a copy of the official documents issued by the Comision Nacional de Seguros y Fianzas approving the 2010 annual statement; and

(4) a copy of the current license to operate in the Republic of Mexico.

(m) Other Financial Reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2011.

TRD-201100292
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 463-6327

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Law Enforcement Officer Standards and Education or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes the repeal of §211.1, Definitions.

The section is being replaced by a new rule which incorporates additional definitions and deletes of out-of-date language.

This repeal is necessary to provide clear and concise definitions for use throughout the rules.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying definitions used throughout the rules.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement

Officer Standards and Education, 6330 East Highway 290, Ste. 200, Austin, TX 78723-1035.

The repeal is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The repeal as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.051, Commission Membership.

No other code, article, or statute is affected by this proposal.

§211.1. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100254

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: March 6, 2011

For further information, please call: (512) 936-7713

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37 TAC §211.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes new §211.1, Definitions. This new rule incorporates additional definitions and deletes of out-of-date language.

The new section is necessary to provide clear and concise definitions for use throughout the rules.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying definitions used throughout the rules.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 East Highway 290, Ste. 200, Austin, TX 78723-1035.

The new section is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

No other code, article, or statute is affected by this proposal.

§211.1. Definitions.

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Academic provider--A school, accredited by the Southern Association of Colleges and Schools and the Texas Higher Education Coordinating Board, which has been approved by the commission to provide basic licensing courses.

(2) Academic alternative program--A program for college credit offered by a training provider recognized by the Southern Association of Colleges and Schools and the Higher Texas Education Board, authorized by the commission to conduct preparatory law enforcement training as part of a degree plan program, and consisting of commission-approved curricula.

(3) Accredited college or university--An institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Commission on Colleges and Universities, the Western Association of Schools and Colleges, or an international college or university evaluated and accepted by a United States accredited college or university.

(4) Active--A license issued by the commission that meets the current requirements of licensure and training as determined by the commission.

(5) Agency--A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a person licensed or certified by the commission.

(6) Administrative Law Judge (ALJ)--An administrative law judge appointed by the chief administrative law judge of the State Office of Administrative Hearings.

(7) Alternative delivery--A learning event characterized by a separation of place or time between the instructor and student, the students, and/or the student and learning resources; and in which the interaction between these is conducted through one or more media.

(8) Appointed--Elected or commissioned by an agency as a peace officer, reserve or otherwise selected or assigned to a position governed by the Occupations Code, Chapter 1701, without regard to pay or employment status.

(9) Background investigation--A pre-employment background investigation that is designed to satisfy:

(A) that an applicant is in compliance with all minimum standards for employment; and

(B) that an applicant is screened out, who, based on their past history or other relevant information, is found to be unsuitable for the position in question.

(C) The background investigation consists of a report that documents, but is not limited to the following:

(i) A review of all previous law enforcement employment, including contacting all former law enforcement employers;

(ii) an investigation looking specifically at a person's dependability; integrity; initiative; situational reasoning ability; self-control; writing skills; reading skills; oral communications skills; interpersonal skills; and physical ability; and

(iii) a report that documents an investigation into an applicant's suitability for licensing and appointment which includes: biographical data; scholastic data; employment data; criminal history

data; interviews with references, supervisors, and other people who have knowledge of the person's abilities, skills, and character; and a summary of the investigator's findings and conclusions regarding the applicant's moral character and suitability.

(10) Basic licensing course--Any current commission developed course that is required before an individual may be licensed by the commission.

(11) Basic peace officer course--The current commission developed course(s) required for licensing as a peace officer, taught at a licensed law enforcement academy in accordance with commission requirements.

(12) Certified copy--A true and correct copy of a document or record certified by the custodian of records of the submitting entity.

(13) Chief administrator--The head or designee of a law enforcement agency.

(14) Commission--The Texas Commission on Law Enforcement Officer Standards and Education.

(15) Commissioned--Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

(16) Commissioners--The nine commission members appointed by the governor.

(17) Contract jail--A correctional facility, operated by a county, municipality or private vendor, operating under a contract with a county or municipality, to house inmates convicted of offenses committed against the laws of another state of the United States, as provided by Texas Government Code, §511.0092.

(18) Contractual training provider--A law enforcement agency, a law enforcement association, alternative delivery trainer, or proprietary training contractor that conducts specific education and training under a contract with the commission.

(19) Convicted--Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(C) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

(20) Court-ordered community supervision--Any court-ordered community supervision or probation resulting from a deferred adjudication or conviction by a court of competent jurisdiction. However, this does not include supervision resulting from a pretrial diversion.

(21) Distance education--The enrollment and study with an educational institution, which provides lesson materials prepared in a sequential and logical order for study by students on their own.

(22) Duty ammunition--Ammunition required or permitted by the agency to be carried on duty.

(23) Endorsement--An official document stating that an individual has met the minimum training standards appropriate to the type of examination sought as determined by the commission.

(24) Executive director--The executive director of the commission or any individual authorized to act on behalf of the executive director.

(25) Experience--Includes each month, or part thereof, served as a peace officer, reserve, jailer, telecommunicator, or federal officer. Credit may, at the discretion of the executive director, be awarded for relevant experience from an out-of-state agency.

(26) Family Violence--In this chapter, has the meaning assigned by Chapter 71, Family Code.

(27) Firearms--Any handgun, shotgun, precision rifle, patrol rifle, or fully automatic weapon that is carried by the individual officer in an official capacity.

(28) Firearms proficiency--Successful completion of the annual firearms proficiency requirements.

(29) Field training program--A program intended to facilitate a transition from the academic setting to the performance of the general duties of the appointing agency.

(30) High School Diploma--An earned high school diploma from a United States high school, an accredited secondary school equivalent to that of United States high school, or a passing score on the general education development test indicating a high school graduation level. Attainment of an associate or baccalaureate degree from an accredited college or university shall be evidence of having met this standard.

(31) Home School Diploma--An earned diploma from a student who predominately receives instruction in a general elementary or secondary education program that is provided by the parent, or a person in parental authority, in or through the child's home. (Education Code, §29.916)

(32) Individual--A human being who has been born and is or was alive.

(33) Jailer--A person employed or appointed as a jailer under the provisions of the Local Government Code, §85.005 or Government Code, §511.0092.

(34) Killed in the line of duty--A death that is the directly attributed result of a personal injury sustained in the line of duty.

(35) Law--Including, but not limited to, the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners' court; or a rule authorized by and lawfully adopted under a statute.

(36) Law enforcement academy--A school operated by a governmental entity that has been licensed by the commission, which may provide basic licensing courses and continuing education.

(37) Law enforcement automobile for training--A vehicle equipped to meet the requirements of an authorized emergency vehicle as identified by Transportation Code, §546.003 and §547.702.

(38) Lesson plan--Detailed guides from which an instructor teaches. The plan includes the goals, specific content and subject matter, performance or learning objectives, references, resources, and method of evaluating or testing students.

(39) License--A license required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(40) Licensee--An individual holding a license issued by the commission.

(41) Line of duty--Any lawful and reasonable action, which an officer identified in Government Code, Chapter 3105 is required or authorized by rule, condition of employment, or law to perform. The term includes an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer.

(42) Moral character--The propensity on the part of a person to serve the public of the state in a fair, honest, and open manner.

(43) Officer--A peace officer or reserve identified under the provisions of the Occupations Code, §1701.001.

(44) Patrol rifle--Any magazine-fed repeating rifle with iron/open sights or with a frame mounted optical enhancing sighting device, 3 power or less, that is carried by the individual officer in an official capacity.

(45) Peace officer--A person elected, employed, or appointed as a peace officer under the provisions of the Occupations Code, §1701.001.

(46) Personal Identification Number (PID)--A unique computer-generated number assigned to individuals for identification in the commission's electronic database.

(47) Placed on probation--Has received an adjudicated or deferred adjudication probation for a criminal offense.

(48) POST--State or federal agency with jurisdiction similar to that of the commission, such as a peace officer standards and training agency.

(49) Precision rifle--Any rifle with a frame mounted optical sighting device greater than 3 power that is carried by the individual officer in an official capacity.

(50) Proprietary training contractor--An approved training contractor who has a proprietary interest in the intellectual property delivered.

(51) Public security officer--A person employed or appointed as an armed security officer identified under the provisions of the Occupations Code, §1701.001.

(52) Reactivate--To make a license issued by the commission active after at least a two-year break in service and the licensee's failure to complete legislatively required training.

(53) Reinstate--To make a license issued by the commission active after disciplinary action or failure to obtain required continuing education.

(54) Reserve--A person appointed as a reserve law enforcement officer under the provisions of the Occupations Code, §1701.001.

(55) Restore--To make a license issued by the commission active after surrender of license.

(56) Self-assessment--Completion of the commission created process, which gathers information about a training or education program.

(57) Separation--An explanation of the circumstances under which the person resigned, retired, or was terminated, reported on the form currently prescribed by the commission, in accordance with Occupations Code, §1701.452.

(58) SOAH--The State Office of Administrative Hearings.

(59) Successful completion--A minimum of:

(A) 70 percent or better; or

(B) C or better; or

(C) pass, if offered as pass/fail.

(60) TCLEDDS--Texas Commission on Law Enforcement Data Distribution System.

(61) Telecommunicator--A dispatcher or other emergency communications specialist appointed under or governed by the provisions of the Occupations Code, Chapter 1701.

(62) Training coordinator--An individual, appointed by a commission-recognized training provider, who meets the requirements of §215.9 of this title.

(63) Training cycle--A 48-month period as established by the commission. Each training cycle is composed of two contiguous 24-month units.

(64) Training hours--Classroom or distance education hours reported in one-hour increments.

(65) Training program--An organized collection of various resources recognized by the commission for providing preparatory or continuing training. This program includes, but is not limited to, learning goals and objectives, academic activities and exercises, lesson plans, exams, skills training, skill assessments, instructional and learning tools, and training requirements.

(66) Training provider--A governmental body, law enforcement association, alternative delivery trainer, or proprietary entity credentialed by the commission to provide preparatory or continuing training for licensees or potential licensees.

(67) Verification (verified)--The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

(b) The effective date of this section is July 14, 2011.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100255
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-7713

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37 TAC §211.26

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §211.26, Law Enforcement Agency Audits. Subsection (b)(1) is amended to identify records that are available for audit. A new subsection (e) is added to require a follow-up of deficiencies and the following subsections are re-lettered. A new subsection (f) is added to clarify administrative penalties for continued deficiencies. Subsection (g) is amended to reflect the effective date of the changes.

These amendments are necessary to incorporate the changes to Texas Occupations Code §1701.162 from House Bill 3389, Section 7.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that all law enforcement agencies are audited and held accountable for deficiencies.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 East Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.162, Records and Audit Requirements.

No other code, article, or statute is affected by this proposal.

§211.26. Law Enforcement Agency Audits.

(a) All law enforcement agencies shall be audited at least once every five years. Agencies with deficiencies will be evaluated more frequently, as determined by the commission.

(b) The commission may use the following information in auditing an agency:

(1) commission records to include but not limited to:[~~:~~]

(A) applications;

(B) appointment records;

(C) separation records; and

(D) training records.

(2) history of previous violations;

(3) reports from past audits;

(4) on-site audits;

(5) reports and complaints from licensees, other law enforcement agencies, and citizens; and

(6) observations by commission staff.

(c) The results of the audit will be forwarded to the chief administrator and governing body.

(d) If deficiencies are identified, the chief administrator must report to the commission in writing within 30 days what steps are being taken to correct deficiencies and on what date they expect to be in compliance.

(e) The commission may conduct a follow-up audit to verify the correction of deficiencies identified in subsection (d) of this section.

(f) Failure to correct deficiencies identified in subsection (d) may result in the imposition of administrative penalties and/or other disciplinary action as provided in §223.1 and §223.2 of this title.

[~~(c)~~ ~~The commission may impose administrative penalties and/or take disciplinary action.~~]

(g) [~~(f)~~] The effective date of this section is July 14, 2011. [~~January 14, 2010.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100250

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: March 6, 2011

For further information, please call: (512) 936-7713

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37 TAC §211.27

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §211.27, Reporting Responsibilities of Individuals. Subsection (a)(6) is amended to clarify the categories of military discharges and comply with changes in other rules. Subsection (b) is amended to reflect the effective date of the changes.

These amendments are necessary to clarify the categories of military discharges that must be reported.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by having consistency in the rules.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 East Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.3075, Qualified Applicant Awaiting Appointment.

No other code, article, or statute is affected by this proposal.

§211.27. Reporting Responsibilities of Individuals.

(a) An individual who either is a licensee or meets the requirements of Texas Occupations Code §1701.307(a) must report to the commission, in a format prescribed by the commission, within 30 days:

(1) any name change;

(2) a permanent mailing address other than an agency address;

(3) all subsequent address changes;

(4) an arrest, charge, or indictment for a criminal offense above the grade of Class C misdemeanor, or for any Class C misdemeanor involving the duties and responsibilities of office or family violence, including the name of the arresting agency, the style, court, and cause number of the charge or indictment, if any;

(5) the final disposition of the criminal action; and

(6) any court martial resulting in a dishonorable or bad conduct discharge.

[(6) all subsequent DD214s to the commission indicating any military discharge other than under honorable or general-under-honorable conditions.]

(b) The effective date of this section is July 14, 2011. [January 14, 2010.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100241
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-7713

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37 TAC §211.28

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §211.28, Responsibility of a Law Enforcement Agency to Report an Arrest of a Peace Officer or County Jailer. Peace Officer and County Jailer are removed from the title due to a statutory reporting requirement change and to be consistent with other rules. Subsection (a) is amended to allow an arresting agency to be held reasonably accountable after receiving formal notice of such appointment status and to incorporate the statutory reporting change. Subsection (b) is amended to reflect the effective date of the changes.

These amendments are necessary to incorporate the changes to Texas Occupations Code §1701.3075 from House Bill 2799. In addition, there are occasions when arrested licensees will not reveal their status to an arresting agency.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying that both appointed license holders and those qualified to be appointed must be reported when arrested to ensure that administrative action is taken to prevent unauthorized personnel from working.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 East Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.153, Reports from Agencies and Schools and §1701.3075, Qualified Applicant Awaiting Appointment.

No other code, article, or statute is affected by this proposal.

§211.28. Responsibility of a Law Enforcement Agency to Report an Arrest [of a Peace Officer or County Jailer].

(a) When an agency receives information that it has arrested or charged an individual that is required to report under §211.27 of this title for any offense above a Class C misdemeanor, or for any Class C misdemeanor involving the duties and responsibilities of office or family violence, the chief administrator or their designee must report such arrest to the commission in the format currently prescribed by the commission within 30 business days of notice of the arrest, including the:

(1) name, date of birth and PID of licensee (if available);

(2) name, address, and telephone number of the arresting agency;

(3) date and nature of the arrest;

(4) arresting agency incident, booking, or arrest number; and

(5) name, address, and telephone number of the court in which such charges are filed or such arrest is filed.

[(a) When a peace officer or county jailer is arrested for a criminal offense above the grade of Class C misdemeanor or for any Class C misdemeanor involving the duties and responsibilities of office or family violence, the chief administrator of an arresting agency or their designee must report such fact to the commission in writing within 30 business days of the arrest, including:]

[(1) the name, date of birth and Personal Identification Number (PID), or social security number of the licensee (if available);]

[(2) the name, address, and telephone number of the arresting agency;]

[(3) the date and nature of the arrest;]

[(4) the arresting agency incident, booking, or arrest number; and]

[(5) the name, address, and telephone number of the court in which such charges are filed or such arrest is filed.]

(b) The effective date of this section is July 14, 2011. [March 1, 2008.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100240
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-7713

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CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.5

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §215.5, Contractual Training. Subsection (l) is added to clarify the enforcement process for contractual providers found at-risk. Subsection (m) is amended to reflect the effective date of the changes.

These amendments are necessary to ensure that all at-risk training providers are treated equally.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by creating a clear and consistent methodology to ensure that all at-risk training providers are treated equally.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 East Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors and §1701.254, Risk Assessment and Inspections.

No other code, article, or statute is affected by this proposal.

§215.5. Contractual Training.

(a) A law enforcement agency, a law enforcement association, alternative delivery trainer, or proprietary training contractor may make application to conduct training for licensees.

(b) As part of the electronic application process, the following documentation shall be submitted:

(1) documentation that an advisory board has been appointed as provided by §215.7 of this chapter and §1701.252 of the Texas Occupations Code;

(2) advisory board minutes that show the advisory board has complied with the requirements of §215.7 of this chapter;

(3) documentation of compliance with the electronic reporting requirements of §1701.1523;

(4) the name and PID of the proposed training coordinator;

(5) documentation that the training coordinator is in compliance with the responsibilities required by contract, law, or rule, to include but not limited to §215.9 of this chapter;

(6) a schedule of tuition and fees that will be charged, if any;

(7) selection of a training facility and instructional materials that meets inspection requirements identified in §215.3(d) of this chapter, as determined by the commission; and

(8) at the request of the executive director the applicant must forward for approval:

(A) resumes for each board member; and/or

(B) at least one copy of the learning objectives of each course covered by the contract.

(c) A training needs assessment must be completed and submitted for commission approval and shall include:

(1) what specific training needs are to be addressed by the proposed contract; and

(2) the number and types of courses that will be offered during the first quarter of the executed contract.

(d) The chief administrator of the sponsoring organization and the proposed training coordinator must appear before the commissioners to respond to questions prior to action being taken on the application.

(e) Once a contract is issued, the chief administrator of the sponsoring organization, or training coordinator, must report in writing to the commission within 30 days:

(1) any change in chief administrator or training coordinator;

(2) any failure to meet commission rules and standards by the provider, training coordinator, instructors, or advisory board;

(3) any change in provider name, physical location, mailing address, electronic mail address, or telephone number; or

(4) when non-compliance with federal or state requirements is discovered.

(f) A contract is limited to those terms expressly included in the contract or incorporated by reference and is:

(1) in the currently prescribed commission format;

(2) signed by the executive director;

(3) signed by the chief administrator or head of the sponsoring organization; and

(4) signed by the training coordinator responsible for the administration of that training.

(g) A contract may approve the courses and the number of times they will be offered. These contracts are for a stated period of time but may be terminated within 10 days by written notice on the part of either party to the contract. A contract may incorporate by reference a law, rule, or any other document; however, any waiver, exception, or deletion must be expressed.

(h) The commission will award training credit for any course conducted by a contract training provider as provided by commission rules unless:

(1) the training was not conducted in compliance with the contract;

(2) the advisory board, training coordinator or instructor failed to discharge any responsibility required by commission rule; or

(3) the credit was claimed by deceitful means.

(i) A contract to provide distance education courses may be approved if the contractual training provider:

(1) submits a request, for which a recovery fee may be charged, in accordance with the commission's rules or established procedures before the course is offered;

(2) ensures that each course will have one or more sponsors assigned, who shall be responsible both for the conduct of the course and the proctoring of any examination during the course;

(3) ensures that the student, without the use of deceitful means, completes the required coursework, receives a passing grade on any examination or evaluation required by the lesson guide or learning objectives; and

(4) ensures that the student's assigned work is corrected, graded, and reviewed by qualified instructors, and returned to the student via an exchange that provides a personalized student-teacher relationship.

(j) The executive director may suspend a contract for any violation of its terms or of any commission rule or law.

(k) The executive director may terminate a contract if no training is conducted within a calendar year unless the chief administrator has petitioned the executive director for a waiver and the waiver has been granted. Any party may terminate, upon written notice to all other parties, received by the executive director, or the coordinator, or any other named person or office.

(l) Notwithstanding any other provision of this chapter, the commission may revoke a contract if the:

(1) contractual provider has been classified as at risk under §215.13 of this chapter for a 12-month period without complying with commission rules; or

(2) training coordinator intentionally or knowingly submits a falsified document or a false written statement or representation to the commission.

(m) [~~(l)~~] The effective date of this section is July 14, 2011. [~~October 28, 2010.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

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Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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For further information, please call: (512) 936-7713

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37 TAC §215.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §215.7, Training Provider Advisory Board. Subsection (b) is amended to require training of advisory board members. Subsection (l) is amended to reflect the effective date of the changes.

These amendments are necessary to attempt to standardize the knowledge level of advisory board requirements and duties for new advisory board members.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that all advisory board members receive training to enable them to perform the duties required.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 East Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.252, Program and School Requirements; Advisory Board.

No other code, article, or statute is affected by this proposal.

§215.7. Training Provider Advisory Board.

(a) All training providers approved by the commission must establish and maintain an advisory board, as required by §1701.252 of the Texas Occupations Code. The board must have at least three members who are appointed by the sponsoring organization. Board membership must not fall below a quorum for more than 30 days. A

quorum of the advisory board is defined as a minimum of 51% of the voting membership.

(b) The board may have members who are law enforcement personnel; however, one-third of the members must be public members, as defined in §1701.052 of the Texas Occupations Code, having the same qualification as any commissioner who is required by law to be a member of the general public. The chief administrator, or head of the sponsoring organization, and the designated training coordinator may only serve as ex-officio, non-voting members. Board members are required to successfully complete the commission developed advisory board training course within one year of appointment to an advisory board.

(c) The chief administrator, or head or the sponsoring organization, may appoint a board chair, or the board may elect a board member to serve as the board chair. The board may elect other officers and set its own rules of procedure. A quorum must be present in order to conduct business.

(d) A board must meet at least once each calendar year. More frequent meetings may be called by the board chair, the training coordinator, or the person who appoints the board.

(e) A board will keep written minutes of all meetings. These minutes must be retained for at least five years and a copy forwarded to the commission upon request.

(f) Board members will be appointed by the following authority:

(1) for an agency academy, by the chief administrator as defined in §211.1 of this title [~~chapter~~];

(2) for a college academy, by the dean or other person who appoints the training coordinator;

(3) for a regional academy, by the head of the council of governments or other sponsoring entity holding the academy license from names submitted by chief administrators from that area;

(4) for a contractual training provider, by the chief administrator; or

(5) for an academic alternative provider, by the dean or other person who appoints the training coordinator.

(g) A member may be removed by the appointing authority.

(h) A board is generally responsible for advising on the development of curricula and any other related duty that may be required by the commission.

(i) The board must, as specific duties:

(1) discharge its responsibilities and otherwise comply with commission rules;

(2) advise on the need to study, evaluate, and identify specific training needs;

(3) advise on the determination of the types, frequency, and location of courses to be offered;

(4) advise on the establishment of the standards for admission, prerequisites, minimum and maximum class size, attendance, and retention; and

(5) advise on the order of preference among employees or prospective appointees of the sponsoring organization and other persons, if any.

(j) No person may be admitted to a training course without meeting the admission standards. The admission standards for licensing courses must be available for review by the commission upon request.

(k) A board may, when discharging its responsibilities, request that a report be made or some other information be provided to them by a training or course coordinator.

(l) The effective date of this section is July 14, 2011. [~~July 6, 2009.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100243
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-7713

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37 TAC §215.13

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §215.13, Risk Assessment. Subsection (a)(1) is amended to remove dated language. Subsection (f) is amended to clarify the enforcement process for providers found at-risk. Subsection (h) is amended to reflect the effective date of the changes.

These amendments are necessary to identify at-risk enforcement process for all training providers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by creating a clear and consistent methodology for ensuring that Texas law enforcement academies maintain the quality of training necessary to provide professionally trained law enforcement personnel for the state.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 East Highway 290 Ste. 200 Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.254, Risk Assessment and Inspections.

No other code, article, or statute is affected by this proposal.

§215.13. Risk Assessment.

(a) A law enforcement academy may be found at risk and placed on at-risk probationary status if:

(1) the passing rate on a licensing exam for first attempts for any three consecutive state fiscal years, beginning with state fiscal year 2007 (September 1, 2006 through August 31, 2007) is less than 80 percent of the students attempting the licensing exam;

[~~(1) after September 1, 2009, the passing rate on a licensing exam for first attempts for any three consecutive state fiscal years, beginning with state fiscal year 2007 (September 1, 2006 through August 31, 2007) is less than 80 percent of the students attempting the licensing exam;~~]

(2) commission required learning objectives are not taught;

(3) lesson plans for classes conducted are not on file;

(4) examination and other evaluative scoring documentation is not on file;

(5) the academy submits false reports to the commission;

(6) the academy makes repeated errors in reporting;

(7) the academy does not respond to commission requests for information;

(8) the academy does not comply with commission rules or other applicable law;

(9) the academy does not achieve the goals identified in its application for a license;

(10) the academy does not meet the needs of the officers and law enforcement agencies served; or

(11) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(b) A contractual provider may be found at risk and placed on at-risk probationary status if:

(1) the contractor provides licensing courses and fails to comply with the passing rates in subsection (a)(1) of this section;

(2) lesson plans for classes conducted are not on file;

(3) examination and other evaluative scoring documentation is not on file;

(4) the provider submits false reports to the commission;

(5) the provider makes repeated errors in reporting;

(6) the provider does not respond to commission requests for information;

(7) the provider does not comply with commission rules or other applicable law;

(8) the provider does not achieve the goals identified in its application for a license or contract;

(9) the provider does not meet the needs of the officers and law enforcement agencies served; or

(10) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(c) An academic alternative provider may be found at risk and placed on at-risk probationary status if:

(1) the academic alternative provider fails to comply with the passing rates in subsection (a)(1) of this section;

(2) courses are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

(3) the commission required learning objectives are not taught;

(4) the program submits false reports to the commission;

(5) the program makes repeated errors in reporting;

(6) the program does not respond to commission requests for information;

(7) the program does not comply with commission rules or other applicable law;

(8) the program does not achieve the goals identified in its application for a license or contract;

(9) the program does not meet the needs of the students and law enforcement agencies served; or

(10) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of education or failure to meet education needs for the service area.

(d) If at risk, the chief administrator of the sponsoring organization, or the training coordinator, must report to the commission in writing within 30 days what steps are being taken to correct deficiencies and on what date they expect to be in compliance.

(e) The chief administrator of the sponsoring organization, or the training coordinator, shall report to the commission the progress toward compliance within the timelines provided in the management response as provided in subsection (d) of this section.

(f) The commission shall place providers found at-risk on probationary status for one year. If the provider remains at-risk after a 12-month probationary period, the commission shall begin the revocation process. If a provider requests a settlement agreement, the commission may enter into an agreement in lieu of revocation.

[~~(f) The commission may take action to revoke their license or contract. The commission may choose not to renew a license or contract with a program that has been found to be at risk or the commission may renew the contract for a shorter period than stated in §215.1 of this chapter.~~]

(g) A training or educational program placed on at-risk probationary status must notify all students and potential students of their at-risk status.

(h) The effective date of this section is July 14, 2011.[~~January 14, 2010.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100252

Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-7713

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CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §217.1, Minimum Standards for Initial Licensure. Subsection (a)(1)(B) is amended to match definitions used throughout the rules. Subsection (a)(4)(A) has been amended for a grammatical clean up. Subsection (a)(13) is amended to clarify the types of discharge allowable for licensure. Subsection (a)(15) has been amended to match the previous rule changes. Subsection (l) is amended to reflect the effective date of the change.

These amendments are necessary to allow veterans with military discharges above dishonorable or bad conduct to meet minimum standards for initial licensure.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by increasing the number of eligible veterans for initial licensure.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 East Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.253, School Curriculum, §1701.256, Instruction In Weapons Proficiency Required, §1701.301, License Required, §1701.302, Certain Elected Law Enforcement Officers; License Required, §1701.306, Psychological and Physical Examination, §1701.307, Issuance of License, §1701.309, Age Requirement, §1701.310, Appointment of County Jailer; Training Required, and §1701.311, Provisional License for Workforce Shortage.

No other code, article, or statute is affected by this proposal.

§217.1. Minimum Standards for Initial Licensure.

(a) The commission shall issue a peace officer, jailer, temporary jailer, or public security officer license to an applicant who meets the following standards:

(1) minimum educational requirements:

(A) has passed a general educational development (GED) test indicating high school graduation level;

(B) holds a high school diploma [~~is a high school graduate~~]; or

(C) has 12 semester hours credit from an accredited college or university.

(2) for peace officers and public security officers, is 21 years of age, or 18 years of age if the applicant has received an associate's degree or 60 semester hours of credit from an accredited college or university or has received an honorable discharge from the armed forces of the United States after at least two years of active service; for jailers is 18 years of age;

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) community supervision history:

(A) has not ever [~~have~~] been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order; but

(B) the commission may approve the application of a person who received probation or court-ordered community supervision for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) conviction history:

(A) has not ever been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years; but

(B) the commission may approve the application of a person who was convicted for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(7) has never been convicted of any family violence offense;

(8) is not prohibited by state or federal law from operating a motor vehicle;

(9) is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been subjected to a background investigation and has been interviewed prior to appointment by representatives of the appointing authority;

(11) has been examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared in writing by that professional within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought;

(B) show no trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory medical exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(12) has been examined by a psychologist, selected by the appointing or employing agency, who is licensed by the Texas State Board of Examiners of Psychologists. The psychologist must be familiar with the duties appropriate to the type of license sought and appointment to be made. This examination may also be conducted by a psychiatrist. The appointee must be declared in writing by that professional to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought within 180 days before the date of appointment by the agency. The examination must be conducted pursuant to professionally recognized standards and methods:

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed;

(B) the examination may be conducted by qualified persons identified by §501.004, of the Texas Occupations Code. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory psychological exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(13) has not had a court martial resulting in a dishonorable or bad conduct discharge;

[~~(13) has not been discharged from any military service under less than honorable conditions including, specifically;~~]

[~~(A) under other than honorable conditions;~~]

[~~(B) bad conduct;~~]

[~~(C) dishonorable;~~]

[~~(D) any other characterization of service indicating bad character;~~]

(14) has not had a commission license denied by final order or revoked;

(15) is not currently on suspension, or does not have a [~~voluntary~~] surrender of license currently in effect;

(16) meets the minimum training standards and passes the commission licensing examination for each license sought;

(17) has not violated any commission rule or provision of the Texas Occupations Code, Chapter 1701; and

(18) is a U.S. citizen.

(b) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(c) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(d) In evaluating whether mitigating circumstances exist, the commission will consider the following factors:

(1) the applicant's history of compliance with the terms of community supervision;

(2) the applicant's continuing rehabilitative efforts not required by the terms of community supervision;

(3) the applicant's employment record;

(4) whether the disposition offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(5) the required mental state of the disposition offense;

(6) whether the conduct resulting in the arrest resulted in the loss of or damage to property or bodily injury;

(7) the type and amount of restitution made by the applicant;

(8) the applicant's prior community service;

(9) the applicant's present value to the community;

(10) the applicant's post-arrest accomplishments;

(11) the applicant's age at the time of arrest; and

(12) the applicant's prior military history.

(e) A person must successfully complete the minimum training required for the license sought:

(1) training for the peace officer license consists of:

(A) the current basic peace officer course;

(B) a commission recognized, POST developed, basic law enforcement training course, to include:

(i) out of state licensure or certification; and

(ii) submission of the current eligibility application and fee; or

(C) a commission approved academic alternative program, taken through a licensed academic alternative provider, and after September 1, 2003, at least an associate's degree.

(2) training for the jailer license consists of the current basic county corrections course(s);

(3) training for the public security officer license consists of the current basic peace officer course; and

(4) passing any examination required for the license sought while the endorsement remains valid.

(f) The commission shall issue a peace officer or jailer license to any person who is otherwise qualified for that license, even if that person is not subject to the licensing law or rules by virtue of election or appointment to office under the Texas Constitution.

(g) A sheriff who first took office on or after January 1, 1994, must meet the licensing requirements of §1701.302 of the Texas Occupations Code.

(h) A constable taking office after August 30, 1999, must meet the licensing requirements of §86.0021 of the Texas Local Government Code.

(i) The commission may issue a provisional license, consistent with §1701.311 of the Texas Occupations Code, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license. A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant. A provisional license may not be reissued and expires:

(1) 12 months from the original appointment date;

(2) on leaving the appointing agency;

(3) on the date the holder fails the peace officer licensing examination for the third time; or

(4) on failure to comply with the terms stipulated in the provisional license approval.

(j) The commission may issue a temporary jailer license, consistent with §1701.310 of the Texas Occupations Code. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary jailer license. A temporary jailer license expires:

(1) 12 months from the original appointment date;

(2) on completion of training and passing of the jailer licensing examination; or

(3) on the date the holder fails the jailer licensing examination for the third time.

(k) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(l) The effective date of this section is July 14, 2011. [~~July 6, 2009.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100244

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: March 6, 2011

For further information, please call: (512) 936-7713

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37 TAC §217.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §217.7, Reporting the Appointment and Termination of a License. Subsection (a) is amended to allow for the electronic submission of requests. Subsection (a)(1) is amended to allow for the electronic submission of requests. Subsection (a)(2) is amended to allow for the electronic submission of requests. Subsection (b) is added to identify the verification requirements. The following subsections were re-lettered as a result. Subsection (e)(4) is amended for grammatical change. Subsection (f) is amended to correct a reference to a prior subsection. Subsection (i) is amended to reflect the effective date of the changes.

These amendments are necessary to incorporate the changes to the Texas Occupations Code §1701.451 from House Bill 3389, §19.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by removing inapplicable provision in the rules.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 East Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.451, Preemployment Request for Employment Termination Report and Submission of Background Check Confirmation Form.

No other code, article, or statute is affected by this proposal.

§217.7. Reporting the Appointment and Termination of a Licensee.

(a) Before a law enforcement agency may hire a person licensed under Chapter 1701, Texas Occupations Code, the agency head or the agency head's designee must[~~, on the agency's letterhead with the appropriate signature~~]:

(1) make a [~~written~~] request to the commission for any employment termination report(s) [~~report~~] regarding the person [~~that is~~] maintained by the commission under this chapter; and

(2) submit to the commission in a manner [~~on the form~~] prescribed by the commission confirmation that the agency:

(A) conducted in the manner prescribed by the commission a criminal background check regarding the person;

(B) obtained the person's written consent on a form prescribed by the commission for the agency to view the person's employment records;

(C) obtained from the commission any service or education records regarding the person maintained by the commission; and

(D) contacted each of the person's previous law enforcement employers.

(b) A request submitted electronically under this section must contain identifying information, acceptable to the commission, for verification.

(c) [~~(b)~~] A law enforcement agency that obtains a consent form described by subsection (a)(2)(B) of this section shall make the person's employment records available to a hiring law enforcement agency on request.

(d) [~~(c)~~] An agency that appoints an individual who already holds a valid, active license appropriate to that position must notify the commission of such appointment not later than 30 days after the date of appointment. The appointing agency must have on file documentation that a peace officer licensee is compliant with weapons qualification according to §217.21 of this chapter within the last 12 months.

(e) [~~(d)~~] If the appointment is made after a 180-day break in service, the agency must have the following on file and readily accessible to the commission:

(1) a new criminal history check by name, sex, race and date of birth from both TCIC and NCIC;

(2) a new declaration of psychological and emotional health;

(3) a new declaration of lack of any drug dependency or illegal drug use; and

(4) one completed applicant fingerprint card or, pending receipt of such card, an original sworn, notarized affidavit by the applicant of their [~~his or her~~] complete criminal history; such affidavit to be maintained by the agency while awaiting the return of completed applicant fingerprint card; and

(5) for peace officers, weapons qualification according to §217.21 of this chapter within the last 12 months.

(f) [~~(e)~~] When an individual licensed by the commission or a telecommunicator separates from appointment or employment with an agency, the agency shall submit a report to the commission in the currently prescribed commission format that reports the separation. The report shall be submitted within 7 business days following the date of separation. If a licensee has filed a timely grievance or appeal within the personnel policies of the agency, the agency shall not be required to file the report until all administrative remedies have been exhausted. The agency shall provide the individual who is the subject of the report a copy of the report within 7 business days after the date of separation.

(g) [~~(f)~~] An agency must retain records kept under this section for a minimum of five years after the licensee's termination date with that agency. The records must be maintained in a format readily accessible to the commission.

(h) [~~(g)~~] A report or statement of separation submitted under section (f) [~~(e)~~] is exempt from disclosure under the Public Information Act, Chapter 552, Texas Government Code, unless the individual resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, and is subject to subpoena only in a judicial proceeding.

(i) [~~(h)~~] The effective date of this section is July 14, 2011. [~~July 15, 2010.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100239
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-7713

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37 TAC §217.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §217.19, Reactivation of a License. Subsection (d) is deleted in order to be consistent across all licenses issued by the Commission and the following subsections are re-lettered. Subsection (e) is amended to reflect the effective date of the changes.

These amendments are necessary to create consistency in the reactivation process for all licenses issued by the Commission.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring consistency in the manner in which licenses issued by the Commission can be reactivated. It is anticipated that this will ensure a low number of instances where licensees contest the process thus reducing staff time needed to address the issue.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to small business, individuals, or both as a result of the proposed section as a fee is already required.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 East Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.304, Examination, §1701.316, Reactivation of Peace Officer License.

No other code, article, or statute is affected by this proposal.

§217.19. Reactivation of a License.

(a) The commission will place all licenses in an inactive status when the licensee has not been reported to the commission as appointed for more than two years unless the licensee has met and continues to meet the continuing education required by §217.11 of this chapter.

(b) The holder of an inactive license is unlicensed for purposes of these sections and the Texas Occupations Code, Chapter 1701.

(c) This section includes any permanent peace officer qualification certificate with an effective date before September 1, 1981.

~~[(d) This section includes any jailer licenses issued after March 1, 2001.]~~

(d) ~~[(e)]~~ In order to reactivate a license, an individual must:

(1) meet the current licensing standards;

(2) successfully complete the legislatively required continuing education for the current training unit;

(3) make application and submit any required fee(s) for an endorsement in the format currently prescribed by the commission;

(4) obtain an endorsement, issued by the commission, giving the individual eligibility to take the required licensing examination; and

(5) pass the licensing examination for the license to be reactivated. After three failures the individual must re-qualify by repeating the entire training course for the license sought.

(e) ~~[(f)]~~ The effective date of this section is July 14, 2011. ~~[April 15, 2010.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.28

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §221.28, Advanced Instructor Proficiency. Subsection (a)(1) is amended to remove experience as a licensee to qualify. Subsection (a)(2) is amended to require the completion of the commission's advanced instructor course. Subsection (b) is amended to reflect the effective date of the changes.

These amendments are necessary to clarify the intended requirements for obtaining an Advanced Instructor Certification.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that persons eligible to obtain an advanced instructor certification will be Commission-approved instructors ensuring professional instruction for Texas law enforcement.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to small business, individuals, or both as a result of the proposed section as a fee is already required.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 East Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

§221.28. Advanced Instructor Proficiency.

(a) To qualify for an advanced instructor proficiency certificate, an applicant must meet all proficiency requirements including:

(1) holding a TCLEOSE Instructor license/certificate for at least three years; and

(2) successful completion of the commission's advanced instructor course.

~~[(1) at least three years' experience as a licensee or an instructor;]~~

~~[(2) a current instructor license or certificate issued by the commission; and]~~

~~[(3) successful completion of the commission's advanced instructor course.]~~

(b) The effective date of this section is July 14, 2011. ~~[October 28, 2010.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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For further information, please call: (512) 936-7713

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CHAPTER 223. ENFORCEMENT

37 TAC §223.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §223.15, Suspension of License. Subsection (c) is amended to

treat convictions and deferred adjudications for offenses above Class C misdemeanor equally. Subsection (d) is amended to add a required suspension of at least 120 days. Subsection (e) is deleted and the following subsections re-lettered. Subsection (e) is amended to place new limits on the ability to probate a suspension. Subsection (i) is amended to conform to other revised subsections. Subsection (p) is amended to reflect the effective date of the change.

These amendments are necessary to establish consistency and adequate remedial sanctions ordered by the Commission.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by establishing consistency in disciplinary actions by the Commission.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 East Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.501, Disciplinary Action.

No other code, article, or statute is affected by this proposal.

§223.15. Suspension of License.

(a) Unless revocation is explicitly authorized by law, the commission may suspend any license issued by the commission if the licensee:

(1) violates any provision of these sections;

(2) violates any provision of the Texas Occupations Code, Chapter 1701;

(3) is convicted of any Class B misdemeanor or above;

(4) is charged with the commission of any Class B misdemeanor or above, adjudication is deferred, and the licensee receives probation or court-ordered community supervision; or

(5) has previously received two written reprimands from the commission.

(b) If a licensee is charged with the commission of a felony, adjudication is deferred, and the licensee is placed on community supervision, the commission shall immediately suspend any license held for a period of 20 years. The suspension of any license under this subsection is effective immediately when the commission receives a certified copy of a court's judgment and issues notice to the licensee via certified mail that any license held is suspended.

(c) If a judgment and sentence is entered resulting in a misdemeanor conviction or an adjudication of guilt is deferred for any misdemeanor above the grade of Class C misdemeanor or any family violence offense [~~above the grade of a Class C misdemeanor~~], the term of suspension shall be ten years.

(d) If a license can be suspended for a misdemeanor conviction or deferred adjudication, the minimum suspension shall be 120 days.

[~~(d) The commission may suspend for not less than six months and not more than 24 months the license of a person convicted of a Class C misdemeanor that was directly related to the duties and responsibilities of office, after the commission has considered, where applicable, the factors listed in the revocation section.~~]

[~~(e) If the court's judgment or adjudication is deferred for any misdemeanor above the grade of Class C misdemeanor or any family violence offense; and the licensee is then placed on community supervision, the term of suspension shall be equal to the actual time served on community supervision.~~]

(e) [~~(f)~~] If a license can be suspended for a [~~community supervision or~~] misdemeanor conviction or deferred adjudication, the commissioners may, in their discretion and upon proof of mitigating factors, probate all or part of a suspension term after the mandatory 120 day suspension. [~~either:~~]

[~~(1) probate all or part of the suspension term during a probation term of up to twice the maximum suspension term; or~~]

[~~(2) issue a written reprimand in lieu of suspension.~~]

(f) [~~(g)~~] If a license can be suspended for any other reason, the commission, through its executive director may, in its discretion and upon proof of the same mitigating factors, either:

(1) probate all or part of the suspension term during a probation term of up to twice the maximum suspension term; or

(2) issue a written reprimand in lieu of suspension.

(g) [~~(h)~~] In evaluating whether mitigating circumstances exist, the commission will consider the following factors:

(1) the licensee's history of compliance with the terms of community supervision;

(2) the licensee's continuing rehabilitative efforts not required by the terms of community supervision;

(3) the licensee's employment record;

(4) whether the disposition offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(5) the required mental state of the disposition offense;

(6) whether the conduct resulting in the arrest resulted in the loss of or damage to property or bodily injury;

(7) the type and amount of restitution made by the licensee;

(8) the licensee's prior community service;

(9) the licensee's present value to the community; and

(10) the licensee's post-arrest accomplishments.

(h) [~~(i)~~] A suspension or probation may be ordered to run concurrently or consecutively with any other suspension or probation. The beginning date of a probation must be within the term of suspension. The beginning date of the suspension shall be:

(1) any date agreed to by both parties, which is no earlier than the date of the rule violation;

(2) the date the licensee notifies the commission in writing of the rule violation if the commission later receives a signed waiver of suspension from the licensee that was postmarked within 30 days of its receipt; or

(3) the date the commission final order is entered in a contested case or the date it becomes effective, if that order is appealed.

(i) [~~(j)~~] The executive director shall inform the commissioners of any such probation or reprimand no later than at their next regular meeting. [~~If probated either way, a suspension may not be probated for less than six months.~~]

(j) [~~(k)~~] The commission may impose reasonable terms of probation, such as:

(1) continued employment requirements;

(2) special reporting conditions;

(3) special document submission conditions;

(4) voluntary duty requirements;

(5) no further rule or law violations; or

(6) any other reasonable term of probation.

(k) [~~(l)~~] A probated license remains probated until:

(1) the term of suspension has expired;

(2) all other terms of probation have been fulfilled; and

(3) a written request for reinstatement has been received and accepted by the commission from the licensee unless the probation has been revoked by the commission for violation of probation; or

(4) until revoked.

(l) [~~(m)~~] Twelve months may be added to the term of a new suspension for each separate previous violation that has resulted in either a license suspension, a probated suspension, or a written reprimand before the beginning date of the new suspension.

(m) [~~(n)~~] Before reinstatement, the probation of a suspended license may be revoked upon a showing that any of its terms have been violated before the expiration date of the probation regardless of when the petition is filed. Upon revocation, the full term of suspension shall be imposed with credit for any time already served on that suspension.

(n) [~~(o)~~] Once a license has been suspended, the suspension probated, the probation revoked, or the licensee reprimanded, the commission shall send, by regular mail, notice of the action to the chief administrator of any agency shown to have the licensee under either current or latest appointment.

(o) [~~(p)~~] A suspended license remains suspended until:

(1) the term of suspension has expired and the term of court-ordered community supervision has been completed; and

(2) a written request for reinstatement has been received from the licensee and accepted by the commission; or

(3) the remainder of the suspension is probated and the license is reinstated.

(p) [~~(q)~~] The effective date of this section is July 14, 2011. [~~October 28, 2010.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100251
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-7713

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37 TAC §223.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §223.19, Revocation of License. Subsection (a) is amended to delete conflicting language and to refer to an additional subsection. Subsection (b) is deleted as it was unnecessary. The following subsection was re-lettered as a result. Subsection (c) is added to broaden the scope of jurisdictions for which a criminal offense will be considered by the commission. Subsection (d) is amended to delete unnecessary language. Subsection (e) amended to narrow the categories of military discharges that shall result in revocation of a license and to be consistent with other rule changes on military discharges. Subsection (f)(2) is amended to comply with the amended language in subsection (e). Subsection (g) is amended to remove the word "conditionally." Subsection (m) is amended to reflect the effective date of the change.

These amendments are necessary to broaden the jurisdictional scope of criminal offenses and increase the number of eligible veterans qualifying for licensure.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring consistency in the rules and to broaden the pool of qualified veterans for licensure.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 East Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

No other code, article, or statute is affected by this proposal.

§223.19. Revocation of Licenses.

(a) The commission shall immediately revoke any license issued by the commission if the licensee is or has been convicted of a felony offense [~~under the laws of this state, another state, or the United States~~] as provided in subsection (b), (c) and (d) [~~and (c)~~] of this sec-

tion. The revocation of any license held is effective immediately when the commission receives a certified copy of a court's judgment and issues notice to the licensee that any license held is revoked. Notice of revocation shall be sent via certified U.S. Mail to the address shown on the Texas driver's license record of the licensee and to the address of the agency showing the licensee under current or last appointment.

[~~(b) A deferred adjudication community supervision is not a felony conviction.~~]

(b) [~~(c)~~] A person is convicted of a felony when an adjudication of guilt on a felony offense is entered against that person by a court of competent jurisdiction whether or not:

(1) the sentence is subsequently probated and the person is discharged from community supervision;

(2) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(3) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(c) The commission will construe any disposition for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another provision of the Texas law; or

(2) a provision of any other state, federal, military, tribal, or foreign jurisdiction.

(d) The [~~Except as provided by subsection (a) of this section, the~~] commission may revoke the license of a person who is either convicted of a misdemeanor offense or placed on deferred adjudication community supervision for a misdemeanor or felony offense, if the offense directly relates to the duties and responsibilities of any related office held by that person. In determining whether a criminal offense directly relates to such office, the commission shall, under this subsection, consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purpose for requiring a license for such office;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of such office.

(e) The commission shall revoke any license issued by the commission if the licensee:

(1) has a court martial resulting in a dishonorable or bad conduct discharge;

[~~(1) is or has been discharged from any military service under less than honorable conditions including specifically;~~]

[~~(A) under other than honorable conditions;~~]

[~~(B) bad conduct;~~]

[~~(C) dishonorable; or~~]

[~~(D) any other characterization of service indicating bad character.~~]

(2) has made, submitted, caused to be submitted, or filed a false or untruthful report to the commission;

(3) has been found to be in unauthorized possession of any commission licensing examination or portion of a commission licensing examination, or a reasonable facsimile thereof; or

(4) violates any section where revocation is the penalty noted.

(f) Revocation of a license shall permanently disqualify a person from licensing and a license may not be reinstated except when the licensee proves the facts supporting the revocation have been negated, such as:

(1) the felony conviction has been reversed or set aside on direct or collateral appeal, or a pardon based on subsequent proof of innocence has been issued;

(2) the dishonorable or bad conduct discharge has been upgraded to above dishonorable or bad conduct conditions;

[~~(2) the discharge under less than honorable conditions has been upgraded to honorable conditions;~~]

(3) the report alleged to be false or untruthful was found to be truthful; or

(4) the section was not violated.

(g) During the direct appeal of any appropriate conviction, a license may be [~~conditionally~~] revoked pending resolution of the mandatory direct appeal. The license will remain revoked unless and until the holder proves that the conviction has been set aside on appeal.

(h) The holder of any revoked license may informally petition the executive director for reinstatement of that license based upon proof by the licensee that the facts supporting the revocation have been negated.

(i) If granted, the executive director shall inform the commissioners of such action no later than at their next regular meeting.

(j) If denied, the holder of a revoked license may petition the commission for a hearing to determine reinstatement based upon the same proof.

(k) Once a license has been revoked, the commission shall search its files and send, by regular mail, notice of the action to the chief administrator of any agency shown to have the licensee under either current or latest appointment.

(l) The date of revocation will be the earliest date that:

(1) a waiver was signed by the holder; or

(2) a final order of revocation was signed by the commissioners.

(m) The effective date of this section is July 14, 2011 [~~October 28, 2010~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100249

Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: March 6, 2011
For further information, please call: (512) 936-7713

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §402.604

The Texas Lottery Commission withdraws the proposed amendment to §402.604 which appeared in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8641).

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100271
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: January 21, 2011
For further information, please call: (512) 344-5012

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TITLE 25. HEALTH SERVICES

PART 4. ANATOMICAL BOARD OF THE STATE OF TEXAS

CHAPTER 477. DISTRIBUTION OF BODIES

25 TAC §§477.1, 477.2, 477.4, 477.7, 477.8

Proposed amended §§477.1, 477.2, 477.4, 477.7, and 477.8, published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6222), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on January 19, 2011.

TRD-201100214

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CHAPTER 479. FACILITIES: STANDARDS AND INSPECTIONS

25 TAC §479.1, §479.4

Proposed amended §479.1 and §479.4, published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6224), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on January 19, 2011.

TRD-201100215

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CHAPTER 485. AUDIT PROCEDURES

25 TAC §485.1

Proposed amended §485.1, published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6224), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on January 19, 2011.

TRD-201100216

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 106. PERMITS BY RULE

SUBCHAPTER Q. PLASTICS AND RUBBER

30 TAC §106.392

Proposed repeal of §106.392, published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6268), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on January 19, 2011.

TRD-201100217

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 211. ADMINISTRATION

37 TAC §211.28

The Texas Commission on Law Enforcement Officer Standards and Education withdraws the proposed amendment to §211.28 which appeared in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9064).

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100247

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: January 21, 2011

For further information, please call: (512) 936-7713

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. PROFESSIONAL STANDARDS

22 TAC §501.63

The Texas State Board of Public Accountancy adopts new §501.63, concerning Financial Statement Standards, without changes to the proposed text as published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10583) and will not be republished.

The new rule will clarify when and how professional standards apply to the preparation of a financial statement by a licensee.

One comment was received regarding adoption of the new rule. The Board received a letter of comment from Mr. Don Wilson, a Texas licensee. Mr. Wilson expressed his concern that the Board is attempting, with the proposed rule, to override current professional standards. He further stated that a licensed CPA is permitted to issue non-attest financial statements or financial information provided the licensee has properly marked the documents. The proposed rule is intended to clarify existing professional standards and not alter them. The rule is intended to state that a licensee can issue internally generated financial statements for internal use without a report but must issue a report when the financial statements are issued for the use of a client. The Board believes that there exists a need for a rule providing this clarification.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2011.

TRD-201100231

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 9, 2011
Proposal publication date: December 3, 2010
For further information, please call: (512) 305-7842

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SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.75

The Texas State Board of Public Accountancy adopts an amendment to §501.75, concerning Confidential Client Communications, with changes to the proposed text as published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10584) and will be republished. The change reflects that there may be other federal laws that require the disclosure of client communication.

The amendment will track the language found in the Public Accountancy Act to identify an exception requiring a CPA to disclose client communications in response to an IRS and SEC summons.

Two comments were received regarding adoption of the amendment. The Board received a letter commenting on this proposed rule revision from the TSCPA. The comment letter supports the rule revision but expresses the suggestion that the Board take the opportunity to expand the rule to clarify that there may be other federal laws that might require a licensee to disclose client communications. An example would be when the Public Company Accounting Oversight Board (PCAOB) requires the production of a licensee's work. The Board agreed with the suggestion and has included language from the Uniform Accountancy Act Rules in the proposed rule adoption but added the word "federal" to the suggested language. The Board believes that federal law may preempt the Public Accountancy Act but in the absence of specific language, a general state law would not. The Board also received a letter from the Texas State Securities Board asking that the Board rule be expanded to provide for subpoenas issued by that agency. The Board recognizes the principle that federal law supersedes state law but believes that attempting to expand the Board's rule to address another state law would not be within its legal ability. The Board will work with the Texas State Securities Board to help it in addressing its subpoena powers.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§501.75. Confidential Client Communications.

Except by permission of the client or the authorized representatives of the client, a person or any partner, officer, shareholder, or employee of a person shall not voluntarily disclose information communicated to him by the client relating to, and in connection with, professional accounting services or professional accounting work rendered to the client by the person. Such information shall be deemed confidential. However, nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by applicable federal laws, federal government regulations, including requirements of the PCAOB, under a summons under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments, the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and its subsequent amendments, or the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) and its subsequent amendments, by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures pursuant to a court order signed by a judge, a congressional or grand jury subpoena, investigations or proceedings under the Act, ethical investigations conducted by private professional organizations, or in the course of peer reviews.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2011.

TRD-201100228
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 9, 2011
Proposal publication date: December 3, 2010
For further information, please call: (512) 305-7842

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CHAPTER 519. PRACTICE AND PROCEDURE
SUBCHAPTER C. PROCEEDINGS AT SOAH

22 TAC §519.41

The Texas State Board of Public Accountancy adopts new §519.41, concerning Disciplinary Powers of the Board, with changes to the proposed text published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10585) and will be republished. The changes can be found in subsections (a)(1) and (2) and (c)(1).

The new rule will identify the disciplinary powers of the Board derived from the Public Accountancy Act and will clarify the restrictions of a licensee during the term of the licensee's suspension.

One comment was received regarding adoption of the new rule. The Board received comments from the TSCPA on this proposed rule supporting the rule but suggesting additional language for clarification. Recognizing that a "practice privilege" is not "issued" like a license or certificate is issued to a licensee by the Board, the comment letter suggested that the Board add the word "granted" to the proposed rule to recognize the distinction. Therefore the Board would clearly have the authority to take disciplinary action against an individual practicing in this state under a license that has been "issued" as well as a practice privilege that has been "granted" by the Board. The TSCPA also suggested adding language to the section of the proposed rule that identifies the services a licensee may perform while suspended to make it clear that the rule only applies to the suspension of a Texas licensee. The Board is in agreement with both comments and has added the suggested language.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§519.41. Disciplinary Powers of the Board.

(a) On a determination that a ground for discipline exists under §901.502 of the Public Accountancy Act, the board may:

(1) revoke a certificate, firm license, or practice privilege issued or granted under this title;

(2) suspend under any terms a certificate, firm license, practice privilege, or license issued or granted under this title for a period not to exceed five years;

(3) refuse to renew a license;

(4) place a license holder on probation;

(5) reprimand a license holder;

(6) limit the scope of a license holder's practice;

(7) require a license holder to complete a peer review program conducted in the manner prescribed by the board;

(8) require a license holder to complete a continuing education program specified by the board;

(9) impose on a license holder the direct administrative costs incurred by the board in taking action under paragraphs (1) through (8) of this subsection;

(10) require a license holder to pay restitution as provided by §901.6015 of the Public Accountancy Act;

(11) impose an administrative penalty under Subchapter L of the Public Accountancy Act; or

(12) impose any combination of the sanctions provided by this subsection.

(b) If a person's license suspension is probated, the board may require the person to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or renew professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(c) The following applies to a CPA that has been suspended from the practice of public accountancy:

(1) May not continue to provide accounting related services to the public as a CPA in the State of Texas.

(2) The suspended licensee's name must be removed from any firm name licensed with the board.

(3) The suspended licensee may perform accounting related services as a non-licensee employee of a licensed CPA firm or as an employee of a business not providing accounting services to the public but may not use the CPA credential during the term of the suspension.

(4) A suspended licensee remains a certificate holder and is subject to the board's rules of professional conduct.

(5) Licensing fees do not accrue during the term of a non-administrative suspension or revocation and are not owed the board upon reinstatement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2011.

TRD-201100232
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 9, 2011
Proposal publication date: December 3, 2010
For further information, please call: (512) 305-7842

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CHAPTER 520. PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENTS SCHOLARSHIP PROGRAM

22 TAC §520.2

The Texas State Board of Public Accountancy adopts an amendment to §520.2, concerning Definitions, without changes to the proposed text as published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10586) and will not be republished.

The amendment will define the term gift aid and clarifies that assistantships and work-study programs are not elements of gift aid.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2011.

TRD-201100229
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 9, 2011
Proposal publication date: December 3, 2010
For further information, please call: (512) 305-7842

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CHAPTER 521. FEE SCHEDULE

22 TAC §521.6

The Texas State Board of Public Accountancy adopts an amendment to §521.6, concerning Duplication and Other Charges and Refund of Board Fees, without changes to the proposed text as published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9043) and will not be republished.

The amendment will permit the board to recover its costs to provide documents requested pursuant to the Public Information Act.

Two comments were received regarding adoption of the amendment. One letter from a CPA suggested that the Board may be trying to hide its files by proposing the rule. The purpose of the rule is to permit the Board's cost recovery for locating, compiling and duplicating documents requested pursuant to the Public Information Act. The Public Information Act permits state agencies to charge costs and there is no intent in the rule to hide Board files. All files requested will be provided to any person making a request pursuant to the Public Information Act. The commenter also suggested that fewer rules are better than more rules. The Board recognizes the concern for fewer rules but the Board believes that adopting this policy as a rule provides greater notice to the public. The second letter from the Freedom of Information Foundation of Texas advised that the Board does not have the authority to charge actual costs as only the Office of Attorney General can permit a state agency to do so pursuant to §552.262 of the Public Information Act. The Board agreed with the second commenter and withheld the consideration of the rule pending the determination by the Office of Attorney General on the Board's request to charge its costs. By letter dated December 22, 2010, the Office of Attorney General approved the Board request.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2011.

TRD-201100233
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 9, 2011
Proposal publication date: October 8, 2010
For further information, please call: (512) 305-7842

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.130

The Texas State Board of Public Accountancy adopts an amendment to §523.130, concerning Ethics Course Requirements for Licensees, with changes to the proposed text as published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10587) and will be republished. The changes to the rule can be found in subsection (d).

The amendment will make it clear that licensees may take ethics courses in a self-study, interactive format.

One comment was received regarding adoption of the amendment. The Board received a letter of comment from the TSCPA suggesting that it would be clearer to the reader if the proposed rule revision not only included the "self-study interactive" language in order to understand that self-study must be more than just reading the material, but that the rule include the correct citation to the applicable rule. The letter of comment pointed out that there is no definition of "self-study interactive" and retaining the citation may eliminate some questions. The Board agreed that the inclusion of the citation may provide clarification and has included it in the proposed rule revision.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§523.130. Ethics Course Requirements for Licensees.

(a) A candidate applying for certification or registration must complete a board-approved four hour ethics course designed to thoroughly familiarize the applicant with the board's Rules of Professional Conduct no more than six months prior to submission of the application. Proof of completion of this course must be submitted with the application.

(b) A licensee must take a four hour ethics course that has been approved by the board pursuant to §523.131 of this title (relating to Board Approval of Ethics Course Content) every two years. Licensees shall report completion of the course on the annual license renewal notice at least every second year.

(c) A licensee granted retired, permanent disability, or other exempt status is not required to complete the ethics course during the licensee's exempt status. When the exempt status is no longer applicable, the licensee must complete an ethics course approved by the board and report it on the annual license renewal notice if due.

(d) A licensee must take the ethics course in a live classroom program or in a self-study interactive program as defined in §523.102 of this title (relating to CPE Purpose and Definitions).

(e) A person who does not reside in the state of Texas, who has no clients within this state, and who is current with the ethics course requirements of his state of residence is not required to take the ethics course mandated by this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2011.

TRD-201100230

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 9, 2011
Proposal publication date: December 3, 2010
For further information, please call: (512) 305-7842

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PART 37. TEXAS BOARD OF ORTHOTICS AND PROSTHETICS

CHAPTER 821. ORTHOTICS AND PROSTHETICS

The Texas Board of Orthotics and Prosthetics (board) adopts the repeal of §§821.1 - 821.7, 821.9, 821.15, 821.17, 821.19, 821.21, 821.23, 821.27 - 821.29, 821.31, 821.33, 821.35, 821.37, 821.39, 821.41, 821.43, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55 and 821.57 and new §821.1 - 821.29, concerning the licensure and regulation of orthotists, prosthetists, assistants, technicians, students, and orthotic and prosthetic facilities, without changes to the proposed rules as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6433), and will not be republished.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 821.1 - 821.7, 821.9, 821.15, 821.17, 821.19, 821.21, 821.23, 821.27 - 821.29, 821.31, 821.33, 821.35, 821.37, 821.39, 821.41, 821.43, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55 and 821.57 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. The rules were repealed and adopted as new rules.

SECTION-BY-SECTION SUMMARY

New §821.1 serves as the introduction to the new chapter. New §821.2 sets out definitions necessary to interpret and apply the new chapter. New §821.3 sets out requirements and procedures for members of the board. New §821.4 establishes licensing fees in amounts reasonable and necessary to cover the costs of administering the licensing program. New §821.5 and §821.6 establish license application requirements, procedures, and timeframes for application processing. New §821.7 sets out rules governing the administration and other procedures for licensure by examination. New §821.8 sets out the requirements applying for licensure by means of unique qualifications. New §§821.9 - 821.11 establish requirements and procedures for licensure as orthotic and prosthetic practitioners, assistants, and technicians. New §821.12 describes the eligibility requirements for a temporary practitioner license. New §821.13 establishes requirements and procedures for licensure as a student. New §821.14 sets out the requirements and procedures regarding the upgrading of student and temporary licenses. New §821.15 sets out rules governing facility operations and the facility accreditation requirements and procedures. New §821.16 sets out rules and procedures governing clinical residencies. New §821.17 establishes procedures and requirements for the renewal of licenses. New §821.18 addresses continuing education requirements for license holders. New §821.19 establishes requirements and procedures for changes of name or address. New

§821.20 sets out procedures for filing complaints against license holders and complaint investigations. New §821.21 addresses disciplinary action by the board. New §821.22 establishes requirements and procedures for licensing of persons with criminal backgrounds. New §§821.23 - 821.26 address the procedures for default orders, license surrenders, license suspensions, and civil penalties. New §821.27 establishes procedures related to handicap accessibility involving the program processes and information. New §821.28 sets out the procedures and guidelines related to displaying licenses. New §821.29 references the procedure for rulemaking petitions.

PUBLIC COMMENT

The board did not receive any comments regarding the adopted rules during the comment period.

22 TAC §§821.1 - 821.7, 821.9, 821.15, 821.17, 821.19, 821.21, 821.23, 821.27 - 821.29, 821.31, 821.33, 821.35, 821.37, 821.39, 821.41, 821.43, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55, 821.57

STATUTORY AUTHORITY

The repeals are authorized by Occupations Code, §605.154, which authorizes the board to adopt rules necessary for the performance of the board's duties.

The repeals affect Occupations Code, Chapter 605.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100268
Richard Neider
Chair
Texas Board of Orthotics and Prosthetics
Effective date: February 10, 2011
Proposal publication date: July 23, 2010
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

22 TAC §§821.1 - 821.29

STATUTORY AUTHORITY

The new sections are authorized by Occupations Code, §605.154, which authorizes the board to adopt rules necessary for the performance of the board's duties.

The new sections affect Occupations Code, Chapter 605.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100269
Richard Neider
Chair
Texas Board of Orthotics and Prosthetics
Effective date: February 10, 2011
Proposal publication date: July 23, 2010
For further information, please call: (512) 458-7111 x6972

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 169. ZOONOSIS CONTROL

SUBCHAPTER F. REPTILE-ASSOCIATED SALMONELLOSIS

25 TAC §169.121

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §169.121, concerning reptile-associated salmonellosis without changes to the proposed text as published in the October 22, 2010, issue of the *Texas Register* (35 TexReg 9467) and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The amendment to §169.121 is necessary to comply with Health and Safety Code, Chapter 81, Subchapter I, "Animal-Borne Diseases," which requires retail pet stores to post signs and distribute warnings relating to reptile-associated salmonellosis to purchasers of reptiles. The signs and warnings are to be in accordance with the form and content designated by the department.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 169.121 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

The amendment to §169.121 allows for consistency with the Centers for Disease Control and Prevention recommendations; clarification of requirements for retailers to post warning signs and distribute written warnings to inform purchasers that reptiles may carry *Salmonella* bacteria in accordance with Health and Safety Code, Chapter 81; and recommendations for preventing transmission of *Salmonella* from reptiles to humans.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rule during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: The Pet Industry Joint Advisory Council, Red River Waste Solutions, Inc., and the Centers for Disease Control and Prevention. Two commenters were against the rule in its entirety. Two commenters were in favor of the rule in its entirety.

Comment: Concerning the rule in general, two commenters thought the rule was new and considered the rule to be an unnecessary piece of governmental legislation. They thought that knowing the risks of purchasing reptiles should be the responsibility of individuals and not a matter of government regulation on businesses.

Response: The commission disagrees because Health and Safety Code, Chapter 81, Subchapter I, "Animal-Borne Diseases," was passed by the 77th Texas Legislature and went into effect on September 1, 2001; it is not a new law. As mandated, the department adopted a rule to govern the form, content, and posting of the sign and the written warning in 2002. No change was made to the rule as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §81.004, which allows the department to adopt rules necessary for the effective administration and implementation of the Communicable Disease Prevention and Control Act; Health and Safety Code, §81.352, which requires the department to adopt a rule governing the form and content of the sign and written warning relating to reptile-associated salmonellosis; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100238
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 10, 2011
Proposal publication date: October 22, 2010
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER G. CAGING REQUIREMENTS AND STANDARDS FOR DANGEROUS WILD ANIMALS

25 TAC §169.131, §169.132

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §169.131 and new §169.132, concerning the caging requirements and registration for dangerous wild animals, without changes to the proposed text, as published in the October 22, 2010, issue of the *Texas Register* (35 TexReg 9468) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendment to §169.131 and new §169.132 are necessary to comply with Health and Safety Code, Chapter 822, Subchapter E, "Dangerous Wild Animals," which requires owners of a dangerous wild animal to keep and confine the animal in accordance with the caging requirements and registration established by the department.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 169.131 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

The amendment to §169.131 will provide for a safe, healthy, and humane environment for the animals; prevent escape by the animals; and clarify the minimum caging requirements relating to the structures and outdoor facilities containing dangerous wild animals in compliance with Health and Safety Code, §822.111.

Addition of new §169.132 has been implemented to provide clarification of the submission process of a certificate copy to the department by the holder of a certificate of registration of a dangerous wild animal, as required in Health and Safety Code, §822.106(b). A procedure was established at the time of initial adoption of §169.131 in 2002 that an owner of a dangerous wild animal submitted an annual fee of $20 per animal to the department to cover the cost of filing a copy of a certificate of registration submitted to the department, as mandated by Health and Safety Code, §822.106(b).

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment and new rule are authorized under the Health and Safety Code, §822.111, which requires the department to establish the caging requirements and standards for the keeping and confinement of dangerous wild animals; Health and Safety Code, §822.106(b), which requires the department to charge a fee for filing a certificate of registration for a dangerous wild animal; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of §169.131 implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100242
Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: October 22, 2010
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 3. LOSS FUNDING, INCLUDING CATASTROPHE RESERVE TRUST FUND, FINANCING ARRANGEMENTS, AND PUBLIC SECURITIES

28 TAC §§5.4101, 5.4102, 5.4111 - 5.4114, 5.4121, 5.4131 - 5.4134, 5.4141 - 5.4147

The Commissioner of Insurance (Commissioner) adopts new §§5.4101, 5.4102, 5.4111 - 5.4114, 5.4121, 5.4131 - 5.4134, and 5.4141 - 5.4147 to implement legislative changes to the Insurance Code Chapter 2210 under House Bill (HB) 4409, 81st Legislature, 2009 Regular Session, and amend the plan of operation of the Texas Windstorm Insurance Association (Association). These sections concern the funding of losses and operating expenses in excess of the Association's premium and other revenue under Subchapters B-1, J, and M, Chapter 2210, Insurance Code. Matters addressed in the plan of operation amendments include: (i) the Catastrophe Reserve Trust Fund (CRTF); (ii) financing arrangements; (iii) issuance of public securities; (iv) use of public securities proceeds; and (v) payment of public security obligations. Sections 5.4111, 5.4121, 5.4131, 5.4132, 5.4141, 5.4144, 5.4145, and 5.4147 are adopted with changes to the proposed text published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6476). Sections 5.4101, 5.4102, 5.4112 - 5.4114, 5.4133, 5.4134, 5.4142, 5.4143, and 5.4146 are adopted without changes. This adoption does not address comments made with respect to proposed new 28 TAC §§5.4161 - 5.4167, 5.4171 - 5.4173, and 5.4181 - 5.4192 published in the July 30, 2010, issue of the *Texas Register* (35 TexReg 6611), including those comments that were presented at the August 24, 2010 hearing. In conjunction with this adoption, the Commissioner has also adopted the repeal of §§5.9901 - 5.9906 of this chapter in a separate order published in this issue of the *Texas Register.*

REASONED JUSTIFICATION. The sections are necessary to implement legislative changes to the Insurance Code Chapter 2210 under HB 4409, 81st Legislature, 2009 Regular Session. The adoption also creates a more efficient rule structure by grouping Association loss funding mechanisms in this division.

To implement HB 4409 it is necessary to amend the plan of operation to address the following: (i) deposits to and disbursements from the CRTF, including deposit of premium surcharges collected under the Insurance Code §2210.259; (ii) financing arrangements; (iii) issuance of public securities; (iv) use of public securities proceeds; and (v) payment of public securities.

To effect these necessary amendments, the following sections become part of the Association's plan of operation: (i) §5.4101, which provides that the adopted sections in this division are part of the plan of operation and shall control over conflicting provisions in the Association's current plan of operation; (ii) §5.4102, which defines terms used in this division; (iii) §§5.4111 - 5.4114, which amend and update the procedures and requirements of repealed §§5.9903 - 5.9906 related to the CRTF; (iv) §5.4121, which addresses financing arrangements authorized under the Insurance Code §2210.072, including the Association's ability to pay and secure the payment of these financing arrangements with public security proceeds; (v) §5.4131, which establishes the procedure for the Association to determine the amount of public securities to be requested, obtain Commissioner approval before requesting the issuance of public securities, and request the public securities from the TPFA; (vi) §5.4132, which provides a summary of activities that the TPFA will be responsible for concerning the issuance of public securities; (vii) §5.4133 and §5.4134, which set forth a procedure for the Association to request the use of the public security proceeds for the payment of incurred claims and operating expenses of the Association, as well as the uses for excess public security proceeds; (viii) §5.4141 and §5.4142 which set forth the funding of the revenue obligation fund for class 1 public security obligations and the disposition of excess class 1 revenue obligation fund amounts; (ix) §§5.4143 - 5.4145 which set forth the funding of the revenue obligation fund for class 2 public security obligations and the disposition of excess class 2 premium surcharge and member assessment amounts; and (x) §5.4146 and §5.4147 which set forth the funding of the revenue obligation fund for class 3 public security obligations and the disposition of excess class 3 revenue obligation fund amounts. Each of the new sections is explained in subsequent discussions.

Additionally, the sections create a more efficient rule structure by grouping Association loss funding mechanisms in this division. This includes moving existing requirements related to the CRTF into this division as new §§5.4101, 5.4102, and 5.4111 - 5.4114. The requirements related to the CRTF were set forth in §§5.9901 - 5.9906 of this chapter. In conjunction with this adoption, §§5.9901 - 5.9906 have been repealed in a separate order published in the January 28, 2011, issue of the *Texas Register.*

The sections are necessary for the orderly and timely funding of insured losses on Association windstorm and hail insurance policies. Under §2210.001 of the Insurance Code, the Legislature has determined that the provision of windstorm and hail insurance is necessary for the economic welfare of the state and its inhabitants, and that the lack of such insurance in the state's seacoast territories would severely impede the orderly growth and development of the state. The Association was created by the Legislature and serves as a residual insurer of last resort for windstorm and hail insurance coverage (insurance coverage)

in the catastrophe area designated by the Commissioner under the Insurance Code §2210.005. The catastrophe area is underserved for insurance coverage and consists of the 14 Texas coastal counties and parts of Harris County. Persons seeking insurance coverage from the Association are unable to obtain comparable insurance coverage in the voluntary insurance market. The ability to obtain insurance coverage that will provide coverage for losses resulting from windstorm and hail is crucial to the financial welfare of persons living and working in the designated catastrophe area. The absence of such coverage providing for the payment of losses results in the lack of an important element for economic stability in the region.

House Bill 4409 substantially amended how Association losses and operating expenses in excess of premium and other revenue are funded in new Subchapters B-1 and M, Chapter 2210, Insurance Code. Compliance with these requirements is essential to assure the availability of Association insurance coverage for all eligible persons and properties. The sections implement the legislative loss funding scheme. Thus, adoption of these sections affects the economic welfare of the state and its inhabitants, and positively impacts the orderly growth and development of the state.

The Association operates under a plan of operation which is adopted by rule. The Insurance Code §2210.151 provides that the Commissioner shall adopt by rule the Association's plan of operation to provide Texas windstorm and hail insurance in the catastrophe area. The Insurance Code §2210.152(a)(1) sets out the requirements of the plan of operation and specifies that the plan of operation must provide for the efficient, economical, fair and nondiscriminatory administration of the Association. Further, the Insurance Code §2210.152(a)(2)(G) provides that the plan of operation may include other provisions considered necessary by the Department to implement the purposes of Chapter 2210.

Historically the Association's plan of operation has been specified in §5.4001 of this chapter (relating to Plan of Operation). Neither the Insurance Code §2210.151 nor §2210.152 require the Association's plan of operation to be in a single section of the Administrative Code. With the adoption of HB 4409 related requirements in §§5.4902 - 5.4908 and 5.4911 of this chapter (relating to Additional Requirements; Declination of Coverage; Flood Insurance, Minimum Retained Premium, Certificate of Compliance Approval Program, Certificate of Compliance Transition Program, Alter and Alteration; and Insurance Policy Forms, Endorsements, Manual Rules, Application Forms, and Underwriting Guidelines; respectively), the Department began to revise the format of the plan of operation into sections related to specific topics. Sections 5.4902 - 5.4908 and 5.4911 were adopted to control over conflicting provisions in §5.4001. The sections in this adoption have similar language with respect to control over §5.4001.

As stated, HB 4409 substantially amended how Association losses and operating expenses in excess of premium and other revenue are funded. It is necessary that these new requirements, which amend or augment the Association's existing plan of operation, be integrated into the plan of operation. The adopted sections integrate these requirements into the plan of operation.

§5.4101. Applicability. As previously discussed, the Association operates under a plan of operation. Section 5.4101(a) provides that the sections in this division shall be considered to be a part of the Association's plan of operation and shall control over any conflicting provision in §5.4001 of this title. It is necessary to adopt the sections in this division as controlling and additional provisions separately from the existing plan of operation to maintain flexibility in implementing the necessary legislative changes and to avoid potential internal conflicts with §5.4001. Revisions to §5.4001 will be addressed at a later date. Section 5.4101(b) is based on repealed §5.9906(e) and provides that the Department retains regulatory oversight of the Association as required by the Insurance Code Chapter 2210, notwithstanding any provision in 28 Texas Administrative Code Chapter 5, Subchapter E. This provision clarifies regulatory authority in situations where the Association is required to work with the Texas Public Finance Authority (TPFA), the Comptroller of the State of Texas (Comptroller), and the Texas Treasury Safekeeping Trust Company (Trust Company).

§5.4102. Definitions. Section 5.4102 defines terms for use in this division. This section is necessary to ensure that the terms are used uniformly and avoid unnecessary repetition in the sections. The definitions are derived in part from repealed §5.9902, which have been updated as necessary; the Insurance Code Chapter 2210; and information provided to the Department from the TPFA. The adoption does not substantively redefine terms used in Chapter 2210; however, the definitions have been adapted for use in this division. Additionally, the definitions use terminology TPFA has provided the Department so that, to the extent possible, items may be referred to consistently in these sections and documents TPFA prepares to implement the purposes of HB 4409 and these rules.

§5.4111. Operation of the Catastrophe Reserve Trust Fund. Section 5.4111 is substantially a restatement of repealed §5.9903 of this chapter and incorporates these provisions into the Association's plan of operation. Section 5.4111(a) identifies the basic responsibilities of the various parties involved in the deposit of funds into the CRTF and the status of the deposited funds.

Section 5.4111(b) has been amended from the repealed text in §5.9903(b) of this chapter to reflect that: (1) under the Insurance Code §2210.452, as amended by HB 4409, the Association no longer contributes the net equity of its members to the CRTF, but rather the Association's net gain from operations; (2) under the Insurance Code §2210.259, as added by HB 4409, the Association must deposit into the CRTF a premium surcharge on certain insured property; and (3) the Association may at some point be required to deposit excess public security proceeds, premium surcharge revenue, and member assessment revenue into the CRTF.

In response to a comment that §5.4111(b)(1) did not include a statement that the Association could use the net gain from operations to purchase reinsurance, the text of proposed §5.4111(b)(1) has been changed to indicate that the statute may allow alternative uses of the Association's net gain from operations. Proposed §5.4111(b)(1) restates repealed §5.9903(b)(1) of this chapter, which was adopted effective August 21, 2000 (25 TexReg 8031). At the time §5.9903 was adopted, the language in the then existing Insurance Code Article 21.49 §8(i)(3) provided that the Association would pay the net equity of its members to fund a commissioner approved reinsurance program or to the CRTF. This is substantively the same requirement that is now set forth in the Insurance Code §2210.452(c), which provides that the Association shall pay the net gain from operations to purchase reinsurance, or to the CRTF, or to both. Members' net equity and the Association's net gain from

operations are both "all premium and other revenue of the Association in excess of incurred losses and operating expenses." Thus, although the statutory change from "members' net equity" to "Association's net gain from operations" is significant for reasons such as federal income taxation, the change did not affect the deposit of funds to the CRTF, purchasing reinsurance, or the method of determining the amount of funds involved.

The Association has made deposits into the CRTF and purchased reinsurance in a routine manner without incident since the adoption of repealed §5.9903(b)(1). Thus, changing the text in §5.4111(b)(1), which restates that prior language, raises concerns as to unforeseen consequences. Reinsurance has been considered an operating expense of the Association and has been paid in quarterly installments. Listing reinsurance in §5.4111(b)(1) could be interpreted as changing these prior practices and limiting reinsurance purchases only to the funds that might be available from the Association net gain from operations at year-end. If reinsurance were to be considered payable solely from the Association's potential net gain from operations, the purchase of reinsurance could become uncertain even when prudent. This could potentially place the Association at a significant financial risk. Further, a reference to reinsurance purchases in §5.4111(b)(1) could be confusing, because this section addresses only deposits into the CRTF and does not address the procedure or requirements for the purchase of reinsurance. Therefore, as discussed, the text has been changed to simply reference that the statute may provide other alternatives, rather than introducing new material and raising the question that the section establishes a procedure or requirement concerning the purchase of reinsurance.

Section 5.4111(b)(2) sets forth the requirement that the Association is to pay the Insurance Code §2210.259 premium surcharge directly to the CRTF. Although the Insurance Code §2210.259 requires that the collected premium surcharge amounts be deposited into the CRTF, the statute does not directly include these amounts within the scope of the CRTF deposit requirement in the Insurance Code §2210.452, nor does the statute state the frequency of these deposits. Although it is within the Commissioner's authority to establish a requirement, the adopted sections also do not impose a requirement as to the frequency or timing of when the §2210.259 premium surcharge deposits must occur. Rather, §5.4111(b)(2) allows for flexibility providing that the Association deposit the funds on a schedule that is agreeable to the Comptroller and the trust company. Finally, because these premium surcharges are not gross premium or other revenue of the Association, but instead are just held by the Association pending deposit in the CRTF, §5.4111(b)(2) requires the Association to account for these funds separately and to pay all investment income earned on the funds into the CRTF.

Section 5.4111(b)(3) addresses the situation that the Association may at some point be in possession of excess public security proceeds, excess premium surcharge revenue, and excess member assessment revenue. The Insurance Code §2210.608 and §2210.611 and §§5.4144, 5.4145, and 5.4147 of this division authorize that the excess funds be deposited into the CRTF.

Because HB 4409 amendments to the Insurance Code §2210.454 repealed references to funding the annual mitigation and preparedness plan, §5.4111 does not include references to that plan which were in §5.9903. Section 5.4111 also makes nonsubstantive updates to statutory references and uses terminology more consistent with this adoption generally.

§5.4112 and §5.4113. Termination of Catastrophe Reserve Trust Fund and Investments of Catastrophe Reserve Trust Fund. Section 5.4112 is substantially a restatement of repealed §5.9904 of this chapter and is consistent with the requirements of the Insurance Code §2210.452(d) concerning termination of the CRTF. Section 5.4113 is substantially a restatement of repealed §5.9905 of this chapter concerning the investment of funds in the CRTF. The sections make nonsubstantive updates to statutory references and use terminology more consistent with this adoption generally.

§5.4114. Duties and Responsibilities. Section 5.4114 is based on repealed §5.9906 of this chapter and sets forth the duties and responsibilities of the Commissioner, the Association, the Comptroller, and the Trust Company in authorizing the release of CRTF funds. The section does not change the procedural requirement set forth in the repealed rules that the Association must request the CRTF funds through the use of a definitive statement. The section, however, has been amended to reflect the current order of loss funding sources set forth in the Insurance Code §2210.071, as added by HB 4409; and not the order that was required under the Insurance Code §2210.058, which was repealed by HB 4409. Because of the new statutory requirements, the Association need only determine that losses exceed the Association's premium and other revenue and available reinsurance proceeds before requesting the CRTF funds. The reference to "available reinsurance proceeds" in this section and other sections in this adoption should not be construed as directing the Association to purchase reinsurance. Rather, it is a statement that reinsurance proceeds may be available to pay claims prior to relying on the CRTF under the Insurance Code §2210.071(b) or other funding sources under the Insurance Code §§2210.072 - 2210.074. This is consistent with the Insurance Code §2210.453 which provides that the Association may purchase reinsurance that operates in addition to or in concert with the CRTF, public securities, and financial instruments authorized by the Insurance Code Chapter 2210. It is conceivable that in the future the Association may determine that purchasing reinsurance is financially prudent and cost effective to protect against a single occurrence or series of occurrences that would deplete the entire CRTF.

Section 5.4114(c) is substantially a restatement of §5.9906(d), except that the section provides that the Commissioner, rather than the Department, shall make the determination to release the CRTF funds. This is consistent with §5.4114(b). Further, §5.4114(c) does not restate the language in §5.9906(d) that could be read as limiting the Commissioner's ability to consider information in making the determination to release CRTF funds to reliance only on statements or notices of definitive or estimated losses "provided by the Association's general manager" and "made for that purpose." The prior language was inconsistent with the premise of "any statement" and further there is no applicable statute proscribing the Commissioner's reliance on any statement from any source that the Commissioner determines to be persuasive. The section does not reflect §5.9906(e) because that provision has been adopted as §5.4101(b). The section also does not reflect §5.9906(f), because member assessments are not addressed in this section. Finally, the section also makes nonsubstantive updates to statutory references and uses terminology consistent with the current statute and this adoption generally.

§5.4121. Financing Arrangements. The Insurance Code §2210.072 and §2210.612, as added by HB 4409, provide that the Association may enter into financing arrangements

directly with a market source for the purpose of enabling the Association to pay losses or obtain public securities under the Insurance Code §2210.072. The Insurance Code §2210.072 and Subchapter M of Chapter 2210 of the Insurance Code also authorize the TPFA to enter into financing arrangements by issuing public securities on behalf of the Association. In particular, the Insurance Code §2210.072 and §2210.612 reference commercial paper, which is issued by the TPFA and defined in the Insurance Code §2210.603 as a class 1 public security. Section 5.4121 relates only to the Association entering into financing directly with a market source. The section does not affect, nor should it be construed as affecting, the TPFA's ability to enter into financing arrangements by issuing public securities on behalf of the Association as authorized in Chapter 2210.

The Association has had financing arrangements in the past. These prearranged financing arrangements provided the Association with immediate cash to be paid on initial loss claims and additional living expense claims following prior catastrophic events. The financing arrangements were in turn paid from the Association's collected premium, reinsurance proceeds, or member assessments. These arrangements were known to the Legislature in enacting HB 4409. Section 5.4121 is consistent with the Insurance Code §2210.072 in providing that the Association may continue to enter into financing arrangements separately from public securities issued by the TPFA.

Section 5.4121(a) has been changed from the proposed text based on comments. The revised subsection provides that the Association may enter into financing arrangements that the Association's board of directors has approved in advance and further limits the section to financing arrangements entered into based on the Insurance Code §2210.072. The additional limitation of prior approval by the board of directors is intended to provide additional transparency concerning the Association's loss funding resources. The revision that this section applies to financing arrangements entered into based on the Insurance Code §2210.072 corresponds to the overall purpose of this division, which is to address excess loss funding. Section 5.4121 has not been revised to limit the allowable types of financing arrangements at this time. The Legislature provided the Association with wide latitude as to the type of financing arrangements. Attempting to pre-determine the arrangement as to either type or amount may result in forcing the Association into less fiscally prudent or beneficial arrangements than may otherwise be available to the detriment of the Association's policyholders.

Section §5.4121(b) sets forth the funds that may be used to repay the financing arrangement. As indicated in the listing in §5.4121(b) any premium, asset, financial arrangement, reinsurance, or class of public security proceed collected by the Association may be used to repay the financing arrangement. First amongst these is the Association's collected premium and other revenue as authorized in the Insurance Code §2210.056. The Association may also refinance or enter into a new financing arrangement and use those proceeds to pay off an existing financing arrangement; however, payment of the obligation would ultimately be made from another source of funds. Also, because a financing arrangement under the Insurance Code §2210.072 would be triggered by excess loss payments, the Association may also have reinsurance recoveries that could be used to pay the debt. However, because the financing arrangements discussed in this section arise under the Insurance Code §2210.072, it is likely that the Association will have insufficient premium and other revenue to fund the financing arrangement when due in addition to loss payments, operating expenses, and the repayment of public securities. If the financing arrangements could not timely be repaid in such circumstances, lenders would not make the funds available.

The Association's loss funding scheme has two required layers, the Association's available premium and the CRTF, followed by public security debt. The funding scheme does not require the Association to enter into financing arrangements nor are the amounts of public securities authorized to be issued or issuable based on market conditions affected by financing arrangements. The use of financing arrangements simply expands the Association's options and allows the Association to pay losses that the Legislature has allocated to public security funding on a timelier basis. It is not reasonable to interpret the Insurance Code §2210.072 as authorizing the continuance of a known means of immediate funding using financing arrangements, but then not also authorizing the means to repay those financing arrangements from the most viable source of funds in the very situation described by §2210.072.

The Insurance Code §2210.072(c) provides that "(I)f the losses are paid with public securities described by the section, the public securities shall be repaid in the manner prescribed in by Subchapter M from association premium revenue." The repayment of public securities issued under the Insurance Code §2210.072 is addressed in the Insurance Code Chapter 2210, Subchapter M, §2210.612. That section refers only to the repayment of public securities and the issuance of commercial paper, which is defined as a public security in the Insurance Code §2210.602(2). These provisions do not address the repayment of financing arrangements and thus do not limit the source of funds to the Association's premium revenue. Rather, the Insurance Code §2210.056 and §2210.608 provide alternative sources of funds for the repayment of financial instruments used to pay the Association's losses.

The Insurance Code §2210.608 authorizes public security proceeds to be used for the payment of the Association's incurred claims and operating expenses. Additionally the Insurance Code §§2210.072 - 2210.074 authorizes the use of public securities to pay losses. In this context, "losses" includes both loss payments and "incurred claims and operating expenses."

The Association's financing arrangements provide funding to pay losses. The character of this usage does not change upon payment of the loss. The Insurance Code Chapter 2210 does not prohibit or restrict the Association or TPFA from paying or refinancing Association issued financing arrangements with public security proceeds. This would include situations in which the only available funds to refinance the financing arrangement would result from a class 2 or 3 public security, such as in the case of a subsequent storm occurring after the entire issuable amount of class 1 public securities had been issued to provide for prior losses. Otherwise, if the Association is required to limit payment of its financing arrangements only to the proceeds of class 1 public securities, the Association would need to deliberately limit the amount of its class 1 public security borrowings so as to maintain a future reserve for the repayment of financial instruments necessary to provide for the immediate payment of claims following a potential subsequent catastrophic event in that year. Such a determination is not consistent with the statute nor is it necessary under the funding scheme created by the Legislature. The placement of financing arrangements in §2210.072 also does not limit the repayment of financial arrangements, as discussed. Rather, the placement is directive to the Association that if it is to use financial arrangements they are to be used to

provide initial excess loss funding. Therefore, §5.4121 clarifies that in addition to premium, other revenue, other assets, and available reinsurance proceeds, the Association may pay for a financing arrangement with the proceeds of any class of public security.

Section 5.4121(c) provides that the Association may secure financing arrangements with a collateral assignment and security interest in and to all or any portion of the Association's right, title, and interest in and to all proceeds of any or all class 1 public securities, class 2 public securities, and/or class 3 public securities. Based on comments received, §5.4121(c) has been changed from the proposed text to add "assets, including without limitation, all or any portion of the Association's" after the word "Association's." This additional text clarifies that the Association may secure the financing arrangement with the Association's assets, (primarily premium and other revenue) in addition to class 1 public securities, class 2 public securities, and/or class 3 public security proceeds.

Such a collateral assignment and security interest is likely to be required in order to obtain a financing arrangement because the Association's premium and other revenue may be secured to fund the class 1 public security obligation revenue fund, as provided in §5.4141. It is probable that the Association's only source of funds for the payment of the financing arrangement that was used to promptly fund the initial catastrophic claims will be the proceeds of a public security. It is reasonable for the Association to secure proceeds to pay catastrophe claims pending the completion of the arrangement, issuing, and funding of the public securities. Therefore, the market source might reasonably request that its repayment be secured in the assets of the Association and the proceeds of the public securities that are issued to fund the catastrophic losses.

§5.4131. Issuance of Public Securities. Section 5.4131 establishes in the Association's plan of operation the procedure to determine the need for public securities and the appropriate amount of public securities to be requested. The TPFA may provide guidance as to market conditions and requirements in this process. The section first requires the Association to reasonably estimate whether catastrophic losses arising from a catastrophic event exceed funds in the CRTF and proceeds from available reinsurance. If the determination is made, the Association may request the issuance of public securities. The Commissioner's approval is required for the issuance of public securities. To clarify that the procedure is consistent with the Insurance Code §2210.604, the text of proposed §5.4131(a) has been changed to provide that each request for the issuance of public securities must be approved by the Commissioner prior to the issuance of the public securities. The Association's public security funding request to the Commissioner must present the information specified in §5.4131(b). As provided in §5.4131(e) the Association may make multiple requests for public security funding.

The information required in the request for public securities is necessary to determine the losses that must be paid and the amount of public securities that may be issued to pay those losses. The Insurance Code §§2210.072, 2210.073, and 2210.074 each authorize the maximum amount, per year, of public securities that may be issued under each class of public securities, which are $1 billion dollars in class 1 public securities, $1 billion dollars in class 2 public securities, and $500 million in class 3 public securities. However, market conditions and requirements may not allow for the TPFA to issue all authorized public securities in a particular class.

As addressed in §5.4131(g) and §5.4132, the Insurance Code Chapter 2210, Subchapter M, authorizes the TPFA through its Board to issue public securities to fund Association losses that are in excess of the Association's premium, other revenue, available reinsurance proceeds, and the CRTF. The Insurance Code Chapter 2210 provides that the TPFA is responsible for setting the terms and conditions of the public securities and distributing public security proceeds as well as establishing accounts necessary to repay the public securities in a timely manner. The public security proceeds and repayment amounts are held by the TPFA in funds and accounts it shall establish with the Trust Company, which is maintained by the Comptroller. Public securities issued pursuant to Chapter 2210 by the TPFA must be approved by the Texas Attorney General.

Comments were received indicating that the Insurance Code Chapter 2210 required the Association to issue, or request issuance of, the entire authorized amount of each class of public securities before the Association is authorized to issue public securities in a subsequent class. Commenters indicated that this was required due to the use of the terms "shall" and "may" in the Insurance Code §§2210.072(b), 2210.073(b), and 2210.074(b). The Department disagrees with the assertions in these comments and no changes have been made to the proposed text, for the reasons stated in this adoption.

The TPFA has informed the Department and the Association that the markets will set the limit for the amount of class 1 public securities that may be issued by considering the Association's current net revenue as the source of the funds to pay the class 1 public security obligation and meet the contractual coverage amount, both for the initial year and subsequent years. As defined in §5.4102, the "contractual coverage amount" is the minimum amount that the Association is required to deposit into the applicable public security obligation revenue fund as security for the payment of debt service on the public securities, administrative expenses on public securities, or other payments required to be paid by the Association in connection with public securities. The contractual coverage amount secures against a drop off in amounts collected to pay the public security. As that amount is required to secure payment, the contractual coverage amount will exceed the required payment. In the case of class 1 public securities, the contractual coverage amount may be greater than the amount owed annually to pay debt service, administrative expenses, or other required payments in connection with class 1 public security obligations.

The Association's net revenue is defined in §5.4102(25) as the Association's gross premium, plus other revenue, less unearned premium, less scheduled policy claims, less budgeted operating expenses, and less amounts necessary to fund or replenish the operating reserve fund. Scheduled policy claims are defined in §5.4102(31) as that portion of the Association's earned premium and other revenue expected to be paid in connection with the disposition of losses that do not result from a catastrophic event. These claims result from localized windstorm and hail events that may involve one to several hundred policyholders per event and could include losses due to straight-line winds, thunderstorms, tornados, hail, or other non-catastrophe wind and hail events. These events occur regularly throughout the catastrophe area, just as they occur regularly throughout the state, and losses related to such events are actuarially calculated into the premium collected by the Association. Budgeted operating expenses as defined in §5.4102(5) are all operating expenses as budgeted for and approved by the Association's board of directors, excluding expenses related to catastrophic losses. These are the ordinary

expenses of the Association to issue policies, pay agent commissions, and adjust and settle scheduled claims. The operating reserve fund, which is defined in §5.4102(26), is established in §5.4141 to allow the Association to continue to function to pay scheduled claims following a loss that requires the issuance of class 1 public securities.

As discussed, the Department has been informed that the market's initial consideration of class 1 public securities would be based on the Association's current net revenue. The Department has also been informed that the market would not necessarily consider additional potential revenue with respect to the issuance of public securities, because even if the Association increased its rates, the net increase in overall gross premium, if any, from this action would not be fully achieved for approximately one year. Premium collections would not necessarily uniformly increase with a rate increase. Some policyholders would pay the increase, some would reduce coverage, and others would cancel or non-renew coverage. Thus, while a rate increase may increase gross revenues and provide an opportunity for a second issuance of class 1 public securities if the funding is needed, it would not be a guarantee that the Association could issue any remaining public securities in that class. Rather, the only definite result of delaying issuance of the next class of public securities to provide needed funding would be to delay payment of incurred claims in frustration of the Association's statutory purpose. Further, the TPFA has informed the Department that the TPFA has a public policy interest in issuing the Association public securities as investment grade. Thus, the Association could not issue securities on what would essentially be a speculative or junk bond basis.

To demonstrate this contractual coverage situation, the Association and the Department were provided estimates that $1 billion in class 1 public securities could result in first year debt service of approximately $125 million, with debt service in subsequent years of approximately $173 million per year. At a 1.5 times contractual coverage amount the Association would be required to have at least $188 million in net revenue for the first year and $259 million for subsequent years. At a three times contractual coverage amount, the net revenue amounts for these periods increase to $376 million and $519 million, respectively. For comparison, the Association's current estimated net revenue is approximately $270 million.

However, this information is based on assumptions of what the market may require. The market may require a greater contractual coverage amount. Thus, it would also be speculative for the Association simply to increase its rates in anticipation of meeting any market contingency or desire. As discussed, increasing the rates, especially significant immediate increases, does not necessarily result in an equivalent increase in premium due to persons reducing or canceling insurance coverage. The result of qualifying persons in need of Association insurance coverage being forced to reduce or cancel coverage based on market whims is not necessarily consistent with the Association's purpose as set forth in the Insurance Code §2210.001.

As for the use of the terms "shall" and "may," the Department recognizes that the Government Code §311.061(1) and (2) defines the terms as having different meanings; however, in the context of the Insurance Code §§2210.072 - 2210.074, the provisions function the same. The term "shall" as used in the Insurance Code §2210.072(b) usually creates a duty, but the section has no stated consequence. Rather, the Insurance Code §2210.073 simply provides that losses not paid under §2210.072 shall be paid as provided in §2210.073. Similarly, the term "may" as used in the Insurance Code §2210.073(b) usually means the act is discretionary; however, in context, neither §2210.073(a), providing that losses not paid under §2210.072 shall be paid as provided in §2210.073, nor the Insurance Code §2210.074(a), providing that losses not paid under §2210.073 shall be paid as provided in §2210.074, indicate that the Association may simply choose to ignore funding such losses. Further, a duty to issue the entire amount, regardless of other concerns, would conflict with the TPFA's discretionary authority to determine the method of sale, type and form of public security, that best achieve the goals of the association and effect the borrowing at the lowest practicable cost as set forth in the Insurance Code §2210.605.

While the HB 4409 amendments, including the adoption of the Insurance Code §2210.072 concerning class 1 public securities, indicate a shift to making the Association more self-reliant, nothing in HB 4409 indicates any legislative intent that the Association is to stop paying claims if the entire class of public securities cannot reasonably be sold in the market's determination. Rather, the Insurance Code §§2210.072 - 2210.074 provide funding for the Association's losses, with the duty that losses not paid under the preceding sections be paid under the subsequent section.

Thus, §5.4131 requires only that the Association request issuance of the reasonably practical maximum principal amount of a class of public security before moving on to the next numerically greater class of public security. Section 5.4131(c) sets out the criteria that the Association must consider in determining the reasonably practical maximum principal amount of public securities. In making its determination the Association may rely on the advice and analysis of the TPFA. Upon receipt of the Commissioner's written approval, the Association shall request the TPFA to issue the approved requested public securities. The Association may then proceed to work with the TPFA to obtain the funds.

As previously stated, §5.4131(e) provides that the Association may make multiple requests for public security funding. As further stated in that subsection, in making these requests the Association must evaluate and request the reasonably practical maximum principal amount of class 1 or class 2 public securities before moving on to the next public security class. Class 2 public securities are included, because even though these public securities have a greater funding basis, market conditions and requirements, including contractual coverage requirements, might still prevent the sale of all of the securities in this class, and thus require the Association to move on to class 3 public securities before exhausting the amount of class 2 public securities authorized under the Insurance Code §2210.073. Class 3 public securities are not referenced because the statute does not identify additional funding sources beyond that class.

Because of the complexity of the public security funding arrangements, it is likely that the TPFA will have already made certain arrangements prior to the occurrence of a catastrophic event that will give rise to the need for the public securities. Nothing in this adoption should be construed as limiting the TPFA's ability to perform such actions. The proposal also generated comments concerning the issuance and payment of class 3 public securities. These comments requested a means of paying a lump sum assessment in lieu of participating in the class 3 public security obligation and setting the insurer's participation percentage at the level it was in the year of the loss, rather than allowing the participation level to adjust annually.

The purpose of §2210.074, and Subchapter B-1, generally, is to provide funding for the payment of Association losses in excess of the Association's premium, other revenue, and the CRTF. The Insurance Code §2210.074(a) provides that the Association's losses payable under §2210.074 be paid either from the proceeds of class 3 public securities or the through reinsurance as described by the Insurance Code §2210.075.

The Insurance Code §2210.075(a) provides that a member insurer may elect to purchase reinsurance to cover an assessment for which the insurer would otherwise be liable under the Insurance Code §2210.074(b). The Insurance Code §2210.074(b) provides that if losses are paid with class 3 public securities, the class 3 public securities will be repaid in the manner described by the Insurance Code Chapter 2210, Subchapter M through assessments as provided by §2210.074. Section 2210.074(b), further provides that the Association shall notify each member of its assessment under §2210.074 and that the proportion of losses allocable to each insurer under §2210.074 shall be determined in the manner used to determine the insurer's participation in the Association under §2210.052. The Insurance Code §2210.6135, which is in Subchapter M, has the same provisions related to notice and allocation, and provides that the class 3 public securities would be paid through member assessments. The Insurance Code §2210.6135, however, further authorizes the Association to assess members up to $500 million per year.

As a whole, these sections could be read to require that either the entire amount of the applicable losses must be paid with class 3 public securities or the entire amount of the applicable losses must be paid with reinsurance, but not necessarily a mixture of both because the Insurance Code §2210.074 does not suggest a means for allocating between the two categories nor does the Insurance Code provide for the direct payment of losses.

Rather, the Insurance Code §2210.075 provides for the use of reinsurance to pay an insurer's assessment under the Insurance Code §2210.074(b), which is the obligation to the class 3 public securities. The Insurance Code §2210.074(b) provides that "if the losses are paid with public securities..., the public securities shall be repaid in the manner prescribed by Subchapter M through assessments as provided by the section." Each insurer's participation in the class 3 public securities is determined by assessment as set forth in the Insurance Code §2210.074(b) and §2210.6135. The insurer may purchase reinsurance to cover this obligation; however, the Insurance Code §2210.075(a) does not require the purchase of reinsurance nor does §2210.075(a) state that reinsurance applies in lieu of participation in the repayment of the class 3 public securities.

Further, the Insurance Code §2210.074 and §2210.6135 indicate that the entire membership of the Association, and thus the Texas property insurance market, will be obligated for the repayment of the public securities. In establishing two groups with one being obligated to repay the public securities and one not being so obligated, that public security funding resource is limited to the financial strength of the obligated participating insurers and the potential that those insures will continue to write in Texas until the public securities are repaid. This could limit the ability of the TPFA to issue class 3 public securities and frustrate the intent of the loss funding scheme set forth in the Insurance Code Chapter 2210, Subchapter B-1.

The comment concerning the member participation formula more directly relates to the separate proposal concerning assessments published in the July 30, 2010, issue of the *Texas Register* (35 TexReg 6611). However to the extent the Association may need to consider the outstanding amount of public securities, it is necessary to consider that the public securities will be paid over a period of approximately 10 years. Significant market changes may occur during that period.

This includes the entry and exit of market participants and changes in company writing practices. Under no situation would the formula be truly fixed for the entire term of the public security obligation, because the formula must consider that over the course of time some members will leave the Texas market or fail financially. Also, new members are only exempt from participating in assessments for the first two years. Additionally, members could also seek to decrease their assessment by increasing their writings in the catastrophe area, an incentive which is consistent with the Insurance Code §2210.009(b) and §2210.053(b). Further, the Association and the members would be required to prepare and use a single calculation for all assessments made during the year for class 2 public securities and class 3 public securities regardless of the year the public securities were issued. Finally, because members would have the same assessment obligation to each class 2 public security and class 3 public security regardless of the year in which the security was issued, the TPFA might also be able to more readily refinance outstanding public securities of the same class and take advantage of changing market conditions.

Therefore, these rules implement the Insurance Code §§2210.074, 2210.075, 2210.0613, and 2210.06135 by establishing and using a system that implements provisions set forth the Insurance Code §2210.074, including the funding of loss payments through the issuance of class 3 public securities which shall be repaid by assessing the Association members. Further, this system reflects an annual set single participation percentage rate for assessing class 2 and class 3 public securities over the course of the public securities, addressing issues resulting from member insurers beginning and ceasing to do business in Texas, and encouraging members to better their assessment position by increasing their writings in the catastrophe area, which is consistent with the Insurance Code §2210.009(b) and §2210.053(b). The members may use reinsurance if they desire and members are not impeded by this rule from working to create reinsurance products that better fit this type of assessment situation.

Additionally, a commenter noted, the authorized amount of public securities is limited. The authorized amount of public securities that may be issued per year is limited, however, under the statute and this adoption, over time funding is only limited by the amount of public securities of any class that may be issued. As previously discussed in this adoption, the limit of public securities that may be issued to fund excess losses under the Insurance Code Chapter 2210, Subchapter B-1 is $2.5 billion per year. This adoption also notes that public security funding may be further limited and reduced based on market conditions. However, while §§2210.072 - 2210.074 limit the authorized amount of public securities that may be issued "per year," these limits are not directly tied to losses resulting from an occurrence or series of occurrences in that year.

The Insurance Code Chapter 2210, Subchapter B-1, does not define the term "year." Because the Association is at greatest risk of a catastrophic event during hurricane season, which occurs June through November, it is reasonable to consider this period to be a calendar year and not twelve months between public security issuances. This is because limiting public security issuances to twelve months intervals could work to significantly

delay loss payments to Association policyholders who incurred an early season storm in a year following a significant late season storm. Thus, January 1, of each year an additional amount of funding is authorized.

The Insurance Code §2210.071 provides that a "(I)f an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association (a catastrophic event), the excess losses and operating expenses shall be paid as provided by (the Insurance Code Chapter 2210, Subchapter B-1). The Insurance Code Chapter 2210, Subchapter B-1 does not specifically limit funding to the year in which the catastrophic event occurred. Rather, the only limitation is the "per year" amount of public securities that may be issued to fund the losses. Thus, funding, in class order as available, may be accessed to cover losses incurred in a prior year so long as the basic condition of a "catastrophic event" persisted.

However, using funds authorized for a subsequent year has certain limitations. As discussed in this adoption, not all sources of funding under §§2210.072 - 2210.074 may be available to the Association annually based on market conditions. Further, use of current year authorized public securities to essentially fund continuing losses from a prior year would significantly reduce or eliminate those remaining funding resources in the current year. Thus, the Legislature may determine that an alternative funding structure is necessary if losses exceed $2.5 billion or those lesser amounts that can be reasonably borrowed based on market conditions.

In analyzing the statute and rule in response to this comment the Department has determined that §5.4131(e) needs to be clarified as to the funds being requested. The revision adds paragraph (3) providing that the public security request shall be applicable to authorized public securities available in the year the request is made, unless stated otherwise in the request. This clarification is necessary to avoid depleting authorized public securities in subsequent year because a late season catastrophe resulted in a timely public security request, but with public securities being issued after January 1 of the next year due to market delays. This requires the Association to act promptly to request the issuance of public securities. However, once the issuance of public securities is requested, the Association has limited continuing involvement and issuance becomes dependent on the actions of the TPFA and the markets. Because of the adverse affect on funding for subsequent years, it is reasonable to consider that the per year limitation in §§2210.072 - 2210.074 refers to the timely request for issuance during the year of the request rather than the potential elimination of funding for subsequent years based on the market that are beyond the control of the Association, the Department, and the TPFA.

Finally, the Insurance Code Chapter 2210 clearly and consistently distinguishes between issuing and refinancing public securities. Therefore, the annual limitations in the Insurance Code §§210.072 - 2210.074 concerning issuance of public securities do not apply to refinancing already issued public securities of the same class.

§5.4132. Texas Public Finance Authority Responsibilities Concerning Issuance of Public Securities. Section 5.4132 generally informs the reader of certain functions that may be performed by the TPFA pursuant to statute. The adopted sections are not intended to establish additional requirements for the TPFA, the Comptroller, or the Trust Company. While the provision imposes no obligation on the TPFA, a commenter did request that §5.4132(3) be clarified to show each provision as being an independent potential action. Based on the comment the paragraph was revised to clarify that the TPFA may perform the listed acts as authorized by the Insurance Code Chapter 2210 and designates the three provisions setting forth the acts as subparagraphs (A) - (C).

§5.4133. Public Security Proceeds. The Insurance Code §2210.607 provides that the public security proceeds shall be held in trust with the Trust Company for the benefit of the Association. The Insurance Code §2210.606 provides that the TPFA may make additional covenants with respect the public securities, including providing for the establishment and maintenance of funds and accounts. The Insurance Code §2210.608 sets forth how public security proceeds may be used, and these uses are incorporated into the definition of the Association Program in §5.4102(2). Section 5.4133 is necessary to establish in the Association's plan of operation the minimum requirements on the Association related to facilitating access to and use of public security proceeds to fund Association program obligations.

§5.4134. Excess Public Security Proceeds. The Insurance Code §2210.608(b) provides for the use of excess public security proceeds. The Insurance Code §2210.608(b), however, does not specifically provide who would make any decision as to those funds. The Insurance Code §2210.608(a), however, vests the use of the public security proceeds in the Association. This section clarifies that the Association shall also determine the use of excess public security proceeds pursuant to the Insurance Code §2210.608. The section also clarifies that while the Association may select from available options under the Insurance Code §2210.608, if any, §2210.608 does not confer this discretion notwithstanding the requirements specified in the Insurance Code §§2210.072(a), 2210.073(a), and 2210.074(a). Thus, public securities may be repaid before their term if the Association's board of directors elects to do so and the Commissioner approves. Section 5.4134 is necessary to establish these requirements in the Association's plan of operation. Neither this section nor this statement concerning the application of the Insurance Code §2210.608, is intended to imply or suggest that the Association may change, alter, or disavow any covenant or obligation in a public security or other agreement.

§5.4141. Obligation Revenue Fund for the Payment of Class 1 Public Security Obligations and Operating Reserve Fund. The Insurance Code §2210.609(a) provides that the Association and the TPFA shall provide for the payment of all public security obligations from the Association's available funds. Further, if the Association is unable to pay the public security obligations and public security administrative expenses, if any, with available funds then the Association shall pay those obligations and expenses in accordance with the Insurance Code §§2210.612, 2210.613, and 2210.6135. The Insurance Code §2210.609(c) provides that all revenue collected under the Insurance Code §§2210.612, 2210.613, and 2210.6135 shall be deposited in the public security obligation fund. Such a requirement is obvious for additional amounts specifically collected for the payment of class 2 and class 3 public security obligations and public security administrative expenses. These amounts will be collected from specifically established premium surcharges and member company assessments. Class 1 public security obligations and public security administrative expenses are paid from the Association's premium and other revenue, however. The Association uses its premium and other revenue to pay for the operating expenses of the Association and non-catastrophic claims.

If the Association's entire premium was held solely for the payment of class 1 public securities, the Association would have no funds available in subsequent years to pay for the operating expenses of the Association and non-catastrophic claims. This would result even if the Association had sufficient income to pay both its class 1 public security obligation and the operating expenses of the Association and non-catastrophic claims. Without access to necessary funds, the Association would be forced to utilize other funding sources to pay non-catastrophe losses and administrative expense. Such an interpretation of the Insurance Code Chapter 2210 would be unreasonable. Therefore, §5.4141 establishes the means for the Association to continue its ordinary operations while funding the obligation revenue fund for the payment of class 1 public security obligations and public security administrative expenses. Under §5.4141, the Association's net revenue as defined in §5.4102(25) and previously discussed in relation to §5.4131 will be deposited by the Association into obligation revenue fund created for class 1 public securities. This amount will include any required contractual coverage amount, which has also been previously discussed in this adoption.

Section 5.4141(b) provides that the Association shall hold the operating reserve fund, which is defined in §5.4102(26) as the amount budgeted each year by the Association for the payment of scheduled policy claims and budgeted operating expenses divided by four. Thus, this fund holds an amount that is approximately three months of scheduled claims and operating expense. The fund would be replenished throughout the year by Association premium collections, with part of the premium being deposited in the operating reserve fund and part of the premium being deposited into the obligation revenue fund. Section 5.4141 also provides that should premium collections fail to meet the needs of the obligation revenue funds, funds would be transferred from the operating reserve fund to the obligation revenue fund.

This section is adopted with a nonsubstantive grammatical change. The second sentence in subsection (a) was amended to insert the word "the" before "obligation revenue fund."

§5.4142. Excess Class 1 Public Security Obligation Revenue Fund Amounts. It is possible that, from time to time, funds in the obligation revenue fund, including the contractual coverage amount, may need to be disbursed. Revenue related to class 1 public securities is the Association's premium and other revenue, which is otherwise an Association asset. Section 5.4142 is necessary to incorporate into the Association's plan of operation so that the Association may thus use such a disbursement as an Association asset. The section also reflects that the Commissioner's approval is required if the Association elects to redeem or purchase public securities under the Insurance Code §2210.072.

§5.4143 and §5.4146. Obligation Revenue Fund for the Payment of Class 2 and Class 3 Public Securities. The Insurance Code §2210.613 provides for the payment of class 2 public security obligations with premium surcharges on most lines of property and casualty insurance policies in the catastrophe area and Association member company assessments. The Insurance Code §2210.6135 provides for the payment of class 3 public security obligations with Association member company assessments. These amounts would include any applicable contractual coverage amounts that the TPFA informs the Association and the Department are necessary. The procedure for establishing, assessing, collecting, reporting, accounting for, and transmitting the premium surcharge to the Association is the subject of a separate proposal for the adoption of §§5.4161 - 5.4167, 5.4171 - 5.4173, and 5.4181 - 5.4192 published in the July 30, 2010, issue of the *Texas Register* (35 TexReg 611).

Section 5.4143 and §5.4146 establish in the Association's plan of operation necessary requirements for handling collected premium surcharges and member assessments. The requirements are similar. As the premium surcharges and member assessments are collected for the purpose of paying public security obligations and not other obligations of the Association, as set forth in the Insurance Code §2210.613 and §2210.6135, they must be held separately from the Association's assets. In both instances, the Association is required to deposit the collected revenue and investment income, if any, on that revenue into the appropriate obligation revenue fund. Further, because of the statutory requirements and the limited uses for the funds, the sections provide that the Association is required to: (1) account for these funds separately; (2) hold these funds separately from other Association funds pending transfer to the obligation revenue fund; and (3) not otherwise use or encumber these funds.

§§5.4144, 5.4145, and 5.4147. Excess Class 2 and Class 3 Public Security Obligation Revenue Fund Amounts. Catastrophe area policyholder premium surcharges and Association member assessments will be accumulated in separate class 2 and class 3 public security revenue obligation funds. Due to contractual coverage amounts that will be required by market lenders to ensure payment of the public security obligation, these revenue obligation funds will hold amounts in excess of what is currently needed for repayment of the public securities for that year. The Insurance Code §2210.611 provides that if excess premium surcharge revenue is collected in any year, those funds may be used in the discretion of the Association to (i) pay public security obligations in a subsequent year; (ii) redeem or purchase outstanding public securities; or (iii) be deposited in the CRTF. Section 5.4144 sets out the statutory provision, and also clarifies that while the Association may select from available options under the Insurance Code §2210.611, if any, that §2210.611 does not confer this discretion notwithstanding the requirement specified in the Insurance Code §2210.073(a). Thus, class 2 public securities may be repaid before their term if the Association's board of directors elects to do so and the Commissioner approves.

Section 5.4145 and §5.4147 establish that an excess member assessment may be handled in a similar manner to excess premium surcharge funds under §5.4144. Thus, if excess member assessment revenue is collected in any year, those funds may be used in the discretion of the Association to (i) pay public security obligations in a subsequent year; or (ii) redeem or purchase outstanding public securities, subject to Commissioner approval. Section 5.4145 and §5.4147 also provide for payment of excess member assessments to the CRTF; however, that option exists only if the other options have been satisfied. While the subject matter of §5.4145 and §5.4147 is not addressed in the Insurance Code Chapter 2210, such a result is considered reasonable and consistent with the overall intent of Chapter 2210. This intent would include the Insurance Code §2210.604 indicating that the public securities be at the lowest practical cost to the Association and the authorizations in the Insurance Code §2210.073 and §2210.074 that the Association's board of directors, subject to the Commissioner's approval as required in the Insurance Code §2210.073 and §2210.074(a), may elect to repay the public securities sooner than their full term. Further it provides for an orderly disposition of the collected funds. Refunding excess member assessment could potentially be considered member

participation in the Association which is not authorized under the Insurance Code Chapter 2210.

In reviewing the text, it has been discovered that subsection (a)(1) of §§5.4144, 5.4145, and 5.4147 makes the same reference to "the amount of the member assessment that would otherwise be required under to be levied for the year under this subchapter." The statement, which tracks the Insurance Code §2210.611(1), needs to be clarified to provided that the "subchapter" reference is referring to the Insurance Code Chapter 2210, Subchapter M. Therefore, the text of §§5.4144(a)(1), 5.4145(a)(1) and 5.4147(a)(1) have been changed to replace the word "subchapter" with "the Insurance Code Chapter 2210, Subchapter M."

Finally, §5.4144 is adopted with a nonsubstantive grammatical change. Section 5.4144(a) was amended to remove the word "a" prior to the phrase "premium surcharges under."

HOW THE SECTIONS WILL FUNCTION.

§5.4101. Applicability. Section 5.4101(a) provides that the sections in this division shall be considered to be a part of the Texas Windstorm Insurance Association's plan of operation and shall control over any conflicting provision in §5.4001 of this title. Section 5.4101(b) provides that the Department retains regulatory oversight of the Association as required by the Insurance Code Chapter 2210, notwithstanding any provision in 28 Texas Administrative Code Chapter 5, Subchapter E.

§5.4102. Definitions. Section 5.4102 defines terms used in this division.

§5.4111. Operation of the Catastrophe Reserve Trust Fund. Section 5.4111 is substantially a restatement of repealed §5.9903 of this chapter and incorporates these provisions into the Association's plan of operation. Section 5.4111(a) identifies the basic responsibilities of the various parties involved in the deposit of funds into the CRTF and the status of the deposited funds. Section 5.4111(b) sets forth the situations under which funds may be deposited into the CRTF.

§5.4112 and §5.4113. Termination of Catastrophe Reserve Trust Fund and Investments of Catastrophe Reserve Trust Fund. Section 5.4112 is substantially a restatement of repealed §5.9904 of this chapter and is consistent with the requirements of the Insurance Code §2210.452(d) concerning termination of the CRTF. Section 5.4113 is substantially a restatement of repealed §5.9905 of this chapter concerning the investment of funds in the CRTF.

§5.4114. Duties and Responsibilities. Section 5.4114 is based on repealed §5.9906 of this chapter and sets forth the duties and responsibilities of the Commissioner, the Association, the Comptroller, and the Trust Company in authorizing the release of CRTF funds.

§5.4121. Financing Arrangements. Section 5.4121 relates only to the Association entering into financing directly with a market source. The section does not affect, nor should it be construed as affecting, the TPFA's ability to enter into financing arrangements by issuing public securities on behalf of the Association as authorized in Chapter 2210. Section 5.4121(a) provides that the Association may enter into financing arrangements that are approved by the Association's board of directors prior to entering into the financing arrangement. Section 5.4121(b) sets forth the funds that may be used to repay the financing arrangement, including public security proceeds.

Section 5.4121(c) provides that the Association may, without limitation, secure financing arrangements under this section with a collateral assignment and security interest in and to all or any portion of the Association's assets, including without limitation all or any portion of the Association's right, title and interest in and to all proceeds of any or all class 1 public securities, class 2 public securities, and/or class 3 public securities and other assets with the priority of each such collateral assignment to be determined by the Association in its discretion.

§5.4131. Issuance of Public Securities. Section 5.4131 establishes in the Association's plan of operation the procedure to determine the need for public securities and the appropriate amount of public securities to be requested. Section 5.4131(a) provides that in the event that the Association reasonably estimates that a catastrophic event has occurred and that the catastrophic losses are estimated to exceed available CRTF funds and available reinsurance proceeds, the Association may request the commissioner's approval for the issuance of class 1, class 2, and/or class 3 public securities. Section 5.4131(a) further provides that each request for the issuance of public securities must be approved by the commissioner prior to the issuance of the public securities. Section 5.4131(b) sets forth the requirements of the request, including that the requested amounts must be at least the reasonably practical maximum principal amount of public securities available for that class. Section 5.4131(c) sets forth the criteria that the Association must consider in determining the reasonably practical maximum principal amount of public securities under subsection (b) of this section. Section 5.4131(d) addresses the Commissioner's consideration in evaluating the Association public security request. Section 5.4131(e) provides that the Association may make one or more requests for public securities, however, the Association must request the issuance of what has been determined to be the reasonably practical maximum principal amount of class 1 public securities before the Association may request issuance of class 2 and class 3 public securities; and likewise must request issuance of what has been determined to be the reasonably practical maximum principal amount of class 2 public securities before the Association may request issuance of class 3 public securities. Additionally, Department has determined that §5.4131(e) needs to be clarified as to the funds being requested. The revision adds paragraph (3) providing that the public security request shall be applicable to authorized public securities available in the year the request is made, unless stated otherwise in the request. This clarification is necessary to avoid depleting authorized public securities in subsequent year because a late season catastrophe resulted in a timely public security request, but with public securities being issued after January 1 of the next year due to market delays.

Section 5.4131(f) provides that the Commissioner's approval of the Association's public security request shall be in writing. Upon receipt of the commissioner's written approval, the Association shall request the TPFA to issue the approved requested public securities. Section 5.4131(g) provides that the Association may enter into agreements as directed by the TPFA for the issuance, reissuance, refinancing, and payment of public security obligations and public security administrative expenses.

§5.4132. Texas Public Finance Authority Responsibilities Concerning Issuance of Public Securities. Section 5.4132 generally informs the reader of certain functions that may be performed by the TPFA pursuant to statute. The adopted sections are not intended to establish additional requirements for the TPFA, the Comptroller, or the Trust Company.

§5.4133. Public Security Proceeds. Section 5.4133 establishes the minimum requirements on the Association related to facilitating access to and use of public security proceeds to fund Association program obligations. Section 5.4133(a) requires the Association to request the proceeds from the TPFA in writing. Section 5.4133(b) sets forth what the Association's request must specify. Section 5.4133(c) authorizes the Association to request proceeds in advanced of actual claims settlement. Section 5.4133(d) sets forth how the Association may hold the proceeds and requires the Association to hold and account for these funds separately from all other sources of funds.

§5.4134. Excess Public Security Proceeds. Section 5.4134 establishes in the Association's plan of operation requirements concerning the use of excess public security proceeds pursuant to the Insurance Code §2210.608 and early repayment of public security obligations.

§5.4141. Obligation Revenue Fund for the Payment of Class 1 Public Security Obligations and Operating Reserve Fund. Section 5.4141 establishes the means for the Association to continue its ordinary operations while funding the obligation revenue fund for the payment of class 1 public security obligations and public security administrative expenses. Under §5.4141(a) the Association's net revenue as defined in §5.4102(25) and previously discussed in relation to §5.4131 will be deposited by the Association into obligation revenue fund created for class 1 public securities. Section 5.4141(b) provides that the Association shall hold the operating reserve fund, which is defined in §5.4102(26).

§5.4142. Excess Class 1 Public Security Obligation Revenue Fund Amounts. Section 5.4142 incorporates into the Association's plan of operation the procedure for the disposition of excess class 1 public security revenue.

§5.4143 and §5.4146. Obligation Revenue Fund for the Payment of Class 2 and Class 3 Public Securities. Section 5.4143 and §5.4146 establish in the Association's plan of operation necessary requirements for handling collected premium surcharges and member assessments that will be used for the payment of class 2 and class 3 public securities.

§§5.4144, 5.4145, and 5.4147. Excess Class 2 and Class 3 Public Security Obligation Revenue Fund Amounts. Section 5.4144 sets out the available options for the disposition of excess class 2 premium surcharges under the Insurance Code §2210.611. The TPFA has informed the Department that a procedure for excess member assessments consistent with the Insurance Code §2210.611 and §5.4144 is necessary for marketing purposes and tax considerations. Section 5.4145 and §5.4147 establish that excess member assessments collected for class 2 and class 3 public securities shall be handled in a similar manner to the Insurance Code §2210.611 and §5.4144.

In reviewing the text, it has been discovered that subsection (a)(1) of §§5.4144, 5.4145, and 5.4147 makes the same reference to "the amount of the member assessment that would otherwise be required under to be levied for the year under this subchapter." The statement, which tracks the Insurance Code §2210.611(1), needs to be clarified to provided that the "subchapter" reference is referring to the Insurance Code Chapter 2210, Subchapter M. Therefore, the text of §§5.4144(a)(1), 5.4145(a)(1) and 5.4147(a)(1) have been changed to replace the word "subchapter" with "the Insurance Code Chapter 2210, Subchapter M."

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General. A commenter made several statements and provided opinions as to future legislative actions that would provide transparent direct assistance using the state's broad based taxing authority would be preferable to the limited assessments adopted in HB 4409; and advocating the Association purchase of reinsurance, which is authorized by statute, as a means spreading the Association's risk of loss globally on a voluntary basis while eliminating the risk of a subsidy of coastal residents by other insurance purchasers in this state.

Agency Response. The Department includes these comments because they were made with respect to the proposal. As the commenter indicates, the sources of revenue for funding public security obligations are set forth in the applicable statutes. This adoption may not change those requirements. Further, as the Commenter noted, the statute authorizes the Association to purchase reinsurance. The adopted sections and this adoption reflect that the Association may purchase reinsurance.

General. A commenter asserts that the Association should adopt risk based rates and establish a system of direct assistance to low income households that have been previously issued Association coverage as a means of fulfilling the Association's role as an insurer of last resort rather than just operating as an affordable option to the private market.

Agency Response. The Department includes this comment because it was made with respect to the proposal. The sections do not address risk based rates or affordable rates for the Association and therefore the Department cannot respond to the comment in relation to the proposal.

Section 5.4102(8). A commenter was concerned that unless the proposal specified that the term "catastrophic event" was specifically limited to the allocation of funds from the CRTF or the issuance of public securities, it could be misapplied to the detriment of the Association's policyholders.

Agency Response. The Department is aware that potential exists for rules and terms in rules to be misapplied. The Department notes that the meanings of the terms in §5.4102 are specifically limited to the adopted division, which concerns Association loss funding. Further, the definition is derived from the Insurance Code §2210.071(a) which describes when the Association may use the excess loss funding mechanisms described in the Insurance Code Chapter 2210, Subchapter B-1. Additionally, the definition is included in this rule because it also is used by the TPFA in its public security documents. Therefore, no change has been made to the definition because its use is already limited to this division concerning loss funding, the definition is limited to the statutory terms triggering the use of the CRTF and public securities; and the change may result in inconsistency with TPFA funding documents.

Section 5.4111(b)(1). A commenter suggested that the language in §5.4111(b)(1) include a reference to reinsurance purchases as provided in the Insurance Code §2210.452(c).

Agency Response. The Department agrees that the language in proposed §5.4111(b)(1) could be read as limiting the options in the Insurance Code §2210.452(c). Therefore, the text of proposed §5.4111(b)(1) has been changed to indicate that the statute may allow alternative uses of the Association's net gain from operations due to a comment that the provision did not include the statement that the Association could use the net gain from operations to purchase reinsurance. Section 5.4111(b)(1) restates repealed §5.9903(b)(1) of this chapter, adopted effective August 21, 2000, in (25 TexReg 8031). At

the time §5.9903 was adopted, the language in the then existing Insurance Code Article 21.49 §8(i)(3) provided that the Association would pay the net equity of its members to fund a commissioner approved reinsurance program or to the CRTF. This is substantively the same requirement that is now set forth in the Insurance Code §2210.452(c), which provides that the Association shall pay the net gain from operations to purchase reinsurance, or to the CRTF, or to both. The member's net equity and the Association's net gain from operations are both "all premium and other revenue of the Association in excess of incurred losses and operating expenses." Thus, although the statutory change from "member's net equity" to "Association's net gain from operations" is significant for reasons such as federal income taxation, the change did not affect the deposit the funds to the CRTF, purchasing reinsurance, or the method of determining the amount of funds involved.

Since the adoption of §5.9903(b)(1), the Association has made deposits into the CRTF and purchased reinsurance in ordinary routine manner without incident. Thus, changing the language of the text raises concerns as to unforeseen consequences. Reinsurance has been considered an operating expense of the Association. Reinsurance purchases have been paid in quarterly installments. Listing reinsurance here could be interpreted as changing these prior practices and limiting reinsurance purchases only to the amount that might be available from the Association net gain from operations. To the extent that reinsurance were to be considered solely payable annually from the Association's potential net gain from operations could make the purchase of reinsurance uncertain even when prudent, thus potentially placing the Association at a significant financial risk. Further, a reference to reinsurance purchases here could be confusing, because this section addresses only deposits into the CRTF and does not address the procedure or requirements for the purchase of reinsurance. Therefore, as discussed the text has been changed to simply reference that the statute may provide other alternatives, rather than introducing new material and raising the question that the section establishes a new procedure or requirement concerning the purchase of reinsurance.

Section 5.4121(a). A commenter suggested that this §5.4121(a) was overly broad and lacked transparency. The commenter suggested that the rule should limit the financing arrangements to funding losses and public securities as outlined in §2210.072(d); limit the type of financing arrangements that the Association could enter into; and address an appropriate level of oversight with respect to these arrangements.

Agency Response. The Department agrees in part and has made changes to §5.4121(a). The revised subsection provides that the Association may enter into financing arrangements that the Association's board of directors has approved in advance and further limits the section to financing arrangements entered into based on the Insurance Code §2210.072. The additional limitation of prior approval by the board of directors is intended to provide additional transparency concerning the Association's loss funding resources. The revision that this section applies to financing arrangements entered into based on the Insurance Code §2210.072 corresponds to the overall purpose of this division which is to address loss funding. The Department disagrees with limiting the allowable types of financing arrangements at this time. The Legislature provided the Association with wide latitude as to the type of financing arrangements. Attempting to pre-determine the arrangement as to either type or amount may result in forcing the Association into less fiscally prudent or beneficial arrangements than may otherwise be available.

Section 5.4121(a). A commenter states that TWIA is not authorized to enter into financing arrangements except as provided in the Insurance Code §2210.072.

Agency Response. The Department agrees with the statement as it applies to loss funding under The Insurance Code Chapter 2210, Subchapter B-1. For reasons stated in a previous response to comments, §5.4121(a) has been revised to state that it applies to financing arrangements entered into based on the Insurance Code §2210.072, which corresponds to the division's overall purpose of addressing loss funding. The Department declines to further restrict the provision.

The Legislature created the Association to act as the windstorm and hail insurer of last resort for property insurance in the catastrophe area. While in general an entity created by the Legislature only has those powers specifically granted to the entity, other powers necessary to fulfill the specified legislative intent may be implied. The Legislature did grant the Association the power to incur and pay operating expenses in the Insurance Code §2210.056. It is reasonable to consider that the Association is imbued with the implied power under the statute to enter into arrangements and incur expenses that would be consistent with the day to day operations of an enterprise collecting more than $400 million in annual premium. These arrangements could include banking arrangements.

Section 5.4121(a). A commenter suggests that financing arrangements are limited to the status of class 1 public securities and that the Association may not enter into financing arrangements except within the limitations of class 1 public securities.

Agency Response. The Department agrees that the proceeds of financing arrangements addressed in these rules would be used as provided in the Insurance Code to pay losses not paid under the Insurance Code §2210.071, which is the requirement placed on class 1 public securities. The Department does not agree that the Association's financing arrangements are limited to the status of class 1 public securities or that they must be arranged by the TPFA. No changes have been made to the proposed text based on this comment.

Consistent with the usage in the Insurance Code §2210.072(d), §5.4102(19) defines a financing arrangement as an agreement with any market source under which the market source makes interest bearing loans or provides other financial instruments to the Association. Thus, a financing arrangement is an agreement concerning a financial instrument. It is not specifically limited to an agreement issue by the TPFA. This contrasts with the Insurance Code §2210.603(7) definition of public security as "a debt instrument or other public security issued by the TPFA." The Insurance Code §2210.603 goes on to define class 1, class 2 and class 3 "public securities" as the types of public securities that the TPFA may issue. The Insurance Code §2210.072(d) refers to commercial paper as a type of financial instrument, however, the Insurance Code §2210.603(2) defines commercial paper within the meaning of the term "Class 1 public securities." Consistent with the statute, §5.4102(13) defines commercial paper notes as class 1 public securities.

Further, the Insurance Code §2210.072 differentiates between financial instruments and public securities, as does the Insurance Code §2210.056(a)(4) and §2210.453(b). If all financial instruments were public securities then this differentiation would be unnecessary. Finally, the Association has had financing ar-

rangements in the past. These were short term arrangements with repayment expected in months, unlike the 10 year periods allowed for public securities. These prearranged financing arrangements provided the Association with millions of dollars in immediate cash to be paid on initial loss claims and additional living expenses following prior catastrophic events. The financing arrangements were in turn paid from the Association's collected premium, reinsurance proceeds, or member assessments that had not been immediately available to pay the losses.

Thus, if the Legislature had intended financing arrangements under §2210.072 to be limited to "public securities" it could have specified that limitation. Instead the statutes clearly create two financing mechanisms. Based on the Association's prior practice it is reasonable to consider that the Legislature intended this dual result. Therefore, §5.4121 and the Insurance Code §2210.072 provide that the Association may continue to enter into financing arrangements in addition to public security arrangements entered into by the TPFA.

Section 5.4121(b). A commenter states that the Association's financing arrangements should be paid only from those sources of funds available to pay class 1 public securities.

Agency Response. The Department disagrees that Chapter 2210 places such a limitation on the Association. As indicated in the listing in §5.4121(b) any premium, asset, financial arrangement, reinsurance, or class of public security proceed collected by the Association may be used to repay the financing arrangement. Therefore no change has been made as a result of this comment.

First amongst these is the Association's collected premium and other revenue as authorized in the Insurance Code §2210.058. The Association may also refinance or enter into a new financing arrangement and use those proceeds to pay off an existing financing arrangement; however, payment of the obligation would ultimately be made from another source of funds. Also, because a financing arrangement under the Insurance Code §2210.072 would be triggered by excess loss payments, the Association may also have reinsurance recoveries that could be used pay the debt. However, because the financing arrangement discussed in this section arises under the Insurance Code §2210.072, it is likely that the Association will have insufficient premium and other revenue to fund the financing arrangement when due in addition to loss payments, operating expenses, and the repayment of public securities. If the financing arrangements could not timely be repaid in such circumstances, lenders would not make the funds available.

The Association's loss funding scheme has two basic layers, the Association's available premium and the CRTF, followed by public security debt. The funding scheme does not require the Association to enter into financing arrangements nor are the amounts of public securities authorized to be issued, or issuable based on market conditions, affected by financing arrangements. The use of financing arrangements simply allows the Association to pay losses that the Legislature has allocated to public security funding on a timely basis. It is not reasonable to interpret the Insurance Code §2210.072 as authorizing the continuance of a known means of immediate funding using financing arrangements, but then not also authorizing the means to repay those financing arrangements from the most viable source of funds in the very situation described by §2210.072.

The Insurance Code §2210.072(c) provides that "(I)f the losses are paid with public securities described by the section, the public securities shall be repaid in the manner prescribed by Subchapter M from association premium revenue." The repayment of public securities issued under the Insurance Code §2210.072 is addressed in the Insurance Code Chapter 2210, Subchapter M, §2210.612. That section refers only to the repayment of public securities and the issuance of commercial paper, which is defined as a public security in the Insurance Code §2210.602(2). These provisions do not address the repayment of financing arrangements and thus do not limit the source of funds to the Association's premium revenue. Rather, the Insurance Code §2210.058 and §2210.608 provide alternative sources of funds for the repayment of financial instruments used to pay the Association's losses.

The Insurance Code §2210.608 authorizes public security proceeds to be used for the payment of the Association's incurred claims and operating expenses. Additionally the Insurance Code §§2210.072 - 2210.074 authorizes the use of public securities to pay losses. In this context, "losses" includes both loss payments and "incurred claims and operating expenses."

The Association's financing arrangements provide funding to pay losses. The character of this usage does not change upon payment of the loss. The Insurance Code Chapter 2210 does not prohibit or restrict the Association or TPFA from paying or refinancing Association issued financing arrangements with public security proceeds. This would include situations in which the only available funds to refinance the financing arrangement would result from a class 2 or 3 public security, such as in the case of a subsequent storm occurring after the entire issuable amount of Class 1 public securities had been issued to provide for prior losses. Otherwise, if the Association is required to limit payment of its financing arrangements only to the proceeds of class 1 public securities, the Association would need to deliberately limit the amount of its class 1 public security borrowings so as to maintain a future reserve for the repayment of financial instruments necessary to provide for the immediate payment of claims following a potential subsequent catastrophic event in that year. Such a determination is not consistent with the statute nor is it necessary under the funding scheme created by the Legislature. The placement of financing arrangements in §2210.072 also does not limit the repayment of financial arrangements, as discussed. Rather, the placement is directive to the Association that if it is to use financial arrangements they are to be used to provide initial excess funding. Therefore, §5.4121 clarifies that in addition to premium, other revenue, other assets, and available reinsurance proceeds, the Association may pay for a financing arrangement with the proceeds of any class of public security.

Section 5.4121(b). A commenter requested clarification as to the use of reinsurance proceeds to pay Association financing arrangements.

Agency Response. Financing arrangements addressed in this section are those used to pay for losses not paid under the Insurance Code §2210.071 as described in the Insurance Code §2210.072. The financing arrangements are intended to provide immediate funding. As losses exceeding funding resources described in §2210.071 may be substantial either due to a single or multiple events, the Association may have reinsurance recoveries that could be used to pay the financing arrangements when the reinsurance is collected at a later date.

Section 5.4121(c). A commenter suggested revising the text of the proposal to provide that a security interest in financing arrangements could extend to all the Association's assets and not just the public security proceeds.

Agency Response. The Department agrees with the comment. The premium and other revenue of the Association are the primary source of repaying the financing arrangements. Thus, §5.4121(c) has been changed to add "assets, including without limitation, all or portion of the Association's" after the word "Association's" in the adoption. This additional text clarifies that the Association is securing the financing arrangement with the Association's assets, in addition to public security proceeds.

Such a collateral assignment and security interest is likely to be required in order to obtain a financing arrangement because the Association's premium and other revenue may be secured to fund the class 1 public security obligation revenue fund, as provided in proposed §5.4141. It is probable that the Association's only source of funds for the payment of the financing arrangement that was used to promptly fund the initial catastrophic claims will be the proceeds of a public security. It is reasonable for the Association to secure proceeds to pay catastrophe claims pending the completion of the arrangement, issuing, and funding of the public securities. Therefore, the market source might reasonably request that its repayment be secured in the assets of the Association and the proceeds of the public securities that are issued to fund the catastrophic losses.

Section 5.4131. A commenter stated that the statute did not authorize the Association to request the issuance of class 2 or class 3 public securities unless the entire authorized amount of the class 1 public securities had been issued or requested to be issued. In support of this position the commenter noted that the Legislature used the phrase "shall be issued" in the Insurance Code §2210.072(b), but used the phrase "may be issued" in the Insurance Code §2210.073(b) and §2210.074(b).

Agency Response. The Department disagrees with the commenter. The purpose of the Insurance Code Chapter 2210, Subchapter B-1 is to provide funding for insured losses on policies that the Legislature has charged the Association with issuing. Placing this funding entirely at the discretion of the bond markets would frustrate that intent. The text has not been changed in response to this comment.

The Insurance Code §§2210.072, 2210.073, and 2210.074 each authorize the maximum amount of public securities, per year, that may be issued under each class of public securities, which are $1 billion dollars in class 1 public securities, $1 billion dollars in class 2 public securities and $500 million in class 3 public securities. However, market conditions and requirements may not allow for the TPFA to issue all authorized public securities in a particular class.

The TPFA has informed the Department and the Association that the markets will set the limit for the amount of class 1 public securities that may be issued by considering the Association's current net revenue as the source of the funds to pay the class 1 public security obligation and meet the contractual coverage amount, both for the initial year and subsequent years. As defined in §5.4102, the "contractual coverage amount" is the minimum amount that the Association is required to deposit into the applicable public security obligation revenue fund as security for the payment of debt service on the public securities, administrative expenses on public securities, or other payments required to be paid by the Association in connection with public securities. The contractual coverage amount secures against a drop off in amounts collected to pay the public security. As that amount is required to secure payment, the contractual coverage amount will exceed the required payment. In the case of class 1 public securities, the contractual coverage amount may be greater than the amount owed annually to pay debt service, administrative expenses, or other required payments in connection with class 1 public security obligations.

The Association's net revenue is defined in §5.4102(25) as the Association's gross premium, plus other revenue, less unearned premium, less scheduled policy claims, less budgeted operating expenses, and less amounts necessary to fund or replenish the operating reserve fund. Scheduled policy claims are defined in §5.4102(31) as that portion of the Association's earned premium and other revenue expected to be paid in connection with the disposition of losses that do not result from a catastrophic event. These claims result from localized windstorm and hail events that may involve one to several hundred policyholders per event and could include losses due to straight-line winds, thunderstorms, tornados, hail, or other non-catastrophe wind and hail events. These events occur regularly throughout the catastrophe area, just as they occur regularly throughout the state, and losses related to such events are actuarially calculated into the premium collected by the Association. Budgeted operating expenses as defined in §5.4102(5) are all operating expenses as budgeted for and approved by the Association's board of directors, excluding expenses related to catastrophic losses. These are the ordinary expenses of the Association to issue policies, pay agent commissions, and adjust and settle scheduled claims. The operating reserve fund, which is defined in §5.4102(26), is established in §5.4141 to allow the Association to continue to pay scheduled claims following a loss that requires the issuance of class 1 public securities.

As discussed, the Department has been informed that the market's initial consideration of class 1 public securities would be based on the Association's current net revenue. The Department has also been informed that the market would not necessarily consider additional potential revenue with respect to the issuance of public securities, because even if the Association increased its rates, the net increase in overall gross premium, if any, from this action would not be fully achieved for approximately one year. Further, premium collections would not necessarily uniformly increase with a rate increase. Some policyholders would pay the increase, some would reduce coverage, and others would cancel or non-renew coverage. Thus, while a rate increase may increase gross revenues and provide an opportunity for a second issuance of class 1 public securities if the funding is needed, it would not be a guarantee that the Association could issue any remaining public securities in that class. Rather, the only definite result of delaying issuance of the next class of public securities to provide needed funding would be to delay payment of incurred claims in frustration of the Association's statutory purpose. Further, the TPFA has informed the Department that the TPFA has a public policy interest in issuing the Association public securities as investment grade. Thus, the Association could not issue securities on what would essentially be a speculative or junk bond basis.

To demonstrate this contractual coverage situation, the Association and the Department were provided estimates that $1 billion in class 1 public securities could result in first year debt service of approximately $125 million, with debt service in subsequent years of approximately $173 million per year. At a 1.5 times contractual coverage amount, the Association would be required to have at least $188 million in net revenue for the first year and $259 million for subsequent years. At a three times contractual coverage amount, the net revenue amounts for these periods increase to $376 million and $519 million, respectively. For com-

parison, the Association's current estimated net revenue is approximately $270 million.

However, this information is based on assumptions of what the market may require. The market may require a greater contractual coverage amount. Thus, it would also be speculative for the Association simply to increase its rates in anticipation of meeting any market contingency or desire. As discussed, increasing the rates, especially significant immediate increases, does not necessarily result in a set amount of additional premiums due to persons reducing or canceling insurance coverage. The result of qualifying persons in need of Association insurance coverage being forced to reduce or cancel coverage based on market whims is not necessarily consistent with the Association's purpose as set forth in the Insurance Code §2210.001.

As for the use of the terms "shall" and "may," the Department recognizes that the Government Code §311.061(1) and (2) defines the terms as having different meanings; however, in the context of the Insurance Code §§2210.072 - 2210.074, the provisions function the same. The term "shall" as used in the Insurance Code §2210.072(b) usually creates a duty, but the section has no stated consequence. Rather, the Insurance Code §2210.073 simply provides that losses not paid under §2210.072 shall be paid as provided in §2210.073. Similarly, the term "may" as used in the Insurance Code §2210.073(b) usually means the act is discretionary; however, in context, neither §2210.073(a), providing that losses not paid under §2210.072 shall be paid as provided in §2210.073, nor the Insurance Code §2210.074(a), providing that losses not paid under §2210.073 shall be paid as provided in §2210.074, indicate that the Association may simply choose to ignore funding such losses. Further, a duty to issue the entire amount, regardless of other concerns, would conflict with the TPFA's discretionary authority to determine the method of sale, type and form of public security that best achieve the goals of the Association and effect the borrowing at the lowest practicable cost as set forth in the Insurance Code §2210.605.

Thus, while the HB 4409 amendments, including the adoption of the Insurance Code §2210.072 concerning class 1 public securities, indicate a shift to making the Association more self-reliant, nothing in HB 4409 indicates any legislative intent that the Association is to stop paying claims if the entire class of public securities cannot reasonably be sold in the market's determination. Rather, the Insurance Code §§2210.072 - 2210.074 provide funding for the Association's losses, with the duty that losses not paid under the preceding sections be paid under the subsequent section.

Thus, §5.4131 requires only that the Association request issuance of the reasonably practical maximum principal amount of a class of public security before moving on to the next numerically greater class of public security. Section 5.4131(c) sets out the criteria that the Association must consider in determining the reasonably practical maximum principal amount of public securities. In making its determination, the Association may rely on the advice and analysis of the TPFA. Upon receipt of the Commissioner's written approval, the Association shall request the TPFA to issue the approved requested public securities. The Association may then proceed to work with the TPFA to obtain the funds.

Section 5.4131. A commenter noted that the statute and rule did not address funding losses in excess of $2.5 billion.

Agency Response. The authorized amount of public securities that may be issued per year is limited, however, under the statute and this adoption, over time funding is only limited by the amount of public securities of any class that may be issued. As previously discussed in this adoption, the limit of public securities that may be issued to fund excess losses under the Insurance Code Chapter 2210, Subchapter B-1 is $2.5 billion per year. This adoption also notes that public security funding may be further limited and reduced based on market conditions. However, while §§2210.072 - 2210.074 limit the authorized amount of public securities that may be issued "per year," these limits are not directly tied to losses resulting from an occurrence or series of occurrences in that year.

The Insurance Code Chapter 2210, Subchapter B-1, does not define the term "year." Because the Association is at greatest risk of a catastrophic event during hurricane season, which occurs June through November, it is reasonable to consider this period to be a calendar year and not twelve months between public security issuances. This is because limiting public security issuances to twelve months intervals could work to significantly delay loss payments to Association policyholders who incurred an early season storm in a year following a significant late season storm. Thus, January 1, of each year an additional amount of funding is authorized.

The Insurance Code §2210.071 provides that "(I)f an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association (a catastrophic event), the excess losses and operating expenses shall be paid as provided by (the Insurance Code Chapter 2210, Subchapter B-1). The Insurance Code Chapter 2210, Subchapter B-1 does not specifically limit funding to the year in which the catastrophic event occurred. Rather, the only limitation is the "per year" amount of public securities that may be issued to fund the losses. Thus, funding, in class order as available, may be accessed to cover losses incurred in a prior year so long as the basic condition of a "catastrophic event" persisted.

However, using funds authorized for a subsequent year has certain limitations. As discussed in this adoption, not all sources of funding under §2210.072 - 2210.074 may be available to the Association annually based on market conditions. Further, use of current year authorized public securities to essentially fund continuing losses from a prior year would significantly reduce or eliminate those remaining funding resources in the current year. Thus, the Legislature may determine that an alternative funding structure is necessary if losses exceed $2.5 billion or those lesser amounts that can be reasonably borrowed based on market conditions.

In analyzing the statute and rule in response to this comment the Department has determined that §5.4131(e) needs to be clarified as to the funds being requested. The revision adds paragraph (3) providing that the public security request shall be applicable to authorized public securities available in the year the request is made, unless stated otherwise in the request. This clarification is necessary to avoid depleting authorized public securities in subsequent year because a late season catastrophe resulted in a timely public security request, but with public securities being issued after January 1 of the next year due to market delays. This requires the Association to act promptly to request the issuance of public securities. However, once the issuance of public securities is requested, the Association has limited continuing involvement and issuance becomes dependent on the actions of the TPFA and the markets. Because of the adverse affect on funding for subsequent years, it is reasonable to consider that the

per year limitation in §§2210.072 - 2210.074 refers to the timely request for issuance during the year of the request rather than the potential elimination of funding for subsequent years based on the market that are beyond the control of the Association, the Department, and the TPFA.

Finally, the Insurance Code Chapter 2210 clearly and consistently distinguishes between issuing and refinancing public securities. Therefore, the annual limitations in the Insurance Code §§2210.072 - 2210.074 concerning issuance of public securities do not apply to refinancing already issued public securities of the same class.

Section 5.4131. Commenters argued that the rule should allow member insurers the option of paying their proportionate share losses under the Insurance Code §2210.074 in a lump sum assessment in lieu of participating in the payment of the class 3 public securities as a means of simplifying the process and reducing costs.

Agency Response. The Department disagrees with the assertion that an insurer may elect to be assessed for the full amount of its obligation to pay Association losses under the Insurance Code §2210.074(a) in lieu of participating in the payment of the class 3 public securities. The Department considers the assertion to be inconsistent with the Insurance Code Chapter 2210 and the adopted procedures implementing that chapter. Therefore, no changes have been made as a result of this comment.

The purpose of §2210.074, and Subchapter B-1, generally, is to provide funding for the payment of Association losses in excess of the Association's premium, other revenue, and the CRTF. The Insurance Code §2210.074(a) provides that the Association's losses payable under §2210.074 be paid either from the proceeds of class 3 public securities or the through reinsurance as described by the Insurance Code §2210.075.

The Insurance Code §2210.075(a) provides that a member insurer may elect to purchase reinsurance to cover an assessment for which the insurer would otherwise be liable under the Insurance Code §2210.074(b). The Insurance Code §2210.074(b) provides that if losses are paid with class 3 public securities, the class 3 public securities will be repaid in the manner described by the Insurance Code Chapter 2210, Subchapter M through assessments as provided by §2210.074. Section 2210.074(b), further provides that the Association shall notify each member of its assessment under §2210.074 and that the proportion of losses allocable to each insurer under §2210.074 shall be determined in the manner used to determine the insurer's participation in the Association under §2210.052. The Insurance Code §2210.6135, which is in Subchapter M, has the same provisions related to notice and allocation, and provides that the class 3 public securities would be paid through member assessments. The Insurance Code §2210.6135, however, further authorizes the Association to assess members up to $500 million per year.

As a whole, these sections could be read to require that either the entire amount of the applicable losses must be paid with class 3 public securities or the entire amount of the applicable losses must be paid with reinsurance, but not necessarily a mixture of both because the Insurance Code §2210.074 does not suggest a means for allocating between the two categories nor does the Insurance Code provide for the direct payment of losses.

Rather, the Insurance Code §2210.075 provides for the use of reinsurance to pay an insurer's assessment under the Insurance Code §2210.074(b), which is the obligation to the class 3 public securities. The Insurance Code §2210.074(b) provides that "if the losses are paid with public securities..., the public securities shall be repaid in the manner prescribed by Subchapter M through assessments as provided by the section." Each insurer's participation in the class 3 public securities is determined by assessment as set forth in the Insurance Code §2210.074(b) and §2210.6135. The insurer may purchase reinsurance to cover this obligation; however, the Insurance Code §2210.075(a) does not require the purchase of reinsurance nor does §2210.075(a) state that reinsurance applies in lieu of participation in the repayment of the class 3 public securities.

Further, the Insurance Code §2210.074 and §2210.6135 indicate that the entire membership of the Association, and thus the Texas property insurance market, will be obligated for the repayment of the public securities. In establishing two groups with one being obligated to repay the public securities and one not being so obligated, that public security funding resource is limited to the financial strength of the obligated participating insurers and the potential that those insures will continue to write in Texas until the public securities are repaid. This could limit the ability of the TPFA to issue class 3 public securities and frustrate the intent of the loss funding scheme set forth in the Insurance Code Chapter 2210, Subchapter B-1.

Section 5.4131. A commenter suggested that the assessments be based on the participation percentages applicable in the year the occurrence or series of occurrences arose and not vary over the term of the public securities.

Agency response. The Department considers that limiting the participation percentages to the year the occurrence or series of occurrences arose to be inconsistent with the Insurance Code Chapter 2210 and the adopted procedures implementing that chapter. Therefore, no changes have been made as a result of this comment.

As to establishing a participation formula, this comment more directly relates to the separate proposal concerning assessments published in the July 30, 2010, issue of the *Texas Register* (35 TexReg 6611). However to the extent the Association may need to consider the outstanding amount of public securities, it is necessary to consider that the public securities will be paid over a period of approximately 10 years. Significant market changes may occur during that period.

This includes the entry and exit of market participants and changes in company writing practices. Under no situation would the formula be truly fixed for the entire term of the public security obligation, because the formula must consider that over the course of time some members will leave the Texas market or fail financially. Also, new members are only exempt from participating in assessments for the first two years. Additionally, members could also seek to decrease their assessment by increasing their writings in the catastrophe area, an incentive which is consistent with the Insurance Code §2210.009(b) and §2210.053(b). Further, the Association and the members would be required to prepare and use a single calculation for all assessments made during the year for class 2 public securities and class 3 public securities regardless of the year the public securities were issued. Finally, because members would have the same assessment obligation to each class 2 public security and class 3 public security regardless of the year in which the security was issued, the TPFA might also be able to more readily refinance outstanding public securities of the same class and take advantage of changing market conditions.

Section 5.4132(3). A commenter suggested revising §5.4132(3) to clarify that each of the three provision reasons for issuing public securities was independent of the other two.

Agency Response. While the provision proposes no obligation of the TPFA, the Department agrees that the provisions could be confusing and has revised §5.4132(3) based on the comment. As discussed in this adoption, §5.4132 is intended to provide the reader with a summary of activities that the TPFA will be responsible for concerning the issuance of public securities. The section does not create requirements that the TPFA must comply with. Based on the comment the paragraph was revised to clarify that the TPFA may perform the listed acts as authorized by the Insurance Code Chapter 2210 and designates the three provisions setting forth the acts as (A) - (C).

NAMES OF THOSE COMMENTING AGAINST THE SECTIONS.

Against, with changes: American Insurance Association, The Heartland Institute, JP Morgan Chase Bank, N.A., Office of Public Insurance Counsel, Property and Casualty Insurers of America, and Texas Windstorm Insurance Association.

STATUTORY AUTHORITY. The sections are adopted under the Insurance Code §§2210.008, 2210.056, 2210.071, 2210.072, 2210.073, 2210.074, 2210.075, 2210.151, 2210.152, 2210.259, 2210.452, 2210.453, 2210.604, 2210.608, 2210.609, 2210.611, 2210.612, 2210.613, 2210.6135, and 36.001. Section 2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules in the manner prescribed in Subchapter A, Chapter 36, Insurance Code. Section 2210.056 establishes the allowable uses for the Association's assets. Section 2210.071(a) provides that if an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the Association in excess of premium and other revenue of the Association, the excess losses and operating expenses shall be paid as provided by Subchapter B-1, Chapter 2210, Insurance Code. Section 2210.071(b) provides that the Association shall pay such excess losses from available amounts in the CRTF. Section 2210.072(a) provides that losses not paid under the Insurance Code §2210.071 shall be paid as provided by this section from the proceeds from class 1 public securities. Section 2210.072(a) also authorizes the early repayment of class 1 public securities if the Association's board of directors elects to do so and the Commissioner approves. Section 2210.072(b) authorizes class 1 public securities to be issued in a principal amount not to exceed $1 billion per year. Section 2210.072(c) requires class 1 public securities to be repaid in the manner prescribed by Subchapter M, Chapter 2210, Insurance Code, from Association premium revenue. Section 2210.072(d) authorizes the Association to enter into financing arrangement with any market source to enable the Association to pay losses under the Insurance Code §2210.072 or to enable the Association to obtain public securities. Section 2210.073 provides that losses not paid under the Insurance Code §2210.072 shall be paid as provided by this section from the proceeds from class 2 public securities issued in accordance with Subchapter M, Chapter 2210, Insurance Code. Section 2210.073(a) also authorizes the early repayment of class 2 public securities if the Association's board of directors elects to do so and the Commissioner approves. Section 2210.073(b) authorizes class 2 public securities to be issued in a principal amount not to exceed $1 billion per year and requires class 2 public securities to be repaid in the manner prescribed by Subchapter M, Chapter 2210, Insurance Code. Section 2210.074(a) provides that losses not paid under the Insurance Code §2210.072 and §2210.073 shall be paid as provided by this section from the proceeds from class 3 public securities issued in accordance with Subchapter M, Chapter 2210, Insurance Code or reinsurance purchased under the Insurance Code §2210.075. Section 2210.074(a) also authorizes the early repayment of class 3 public securities if the Association's board of directors elects to do so and the Commissioner approves. Section 2210.074(b) authorizes class 3 public securities to be issued in a principal amount not to exceed $500 million per year; provides that if the losses are paid with class 3 public securities, the class 3 public securities will be repaid in the manner described by the Insurance Code Chapter 2210, Subchapter M, through assessments as provided by §2210.074; and that the Association shall notify each member of its assessment under §2210.074 and that the proportion of losses allocable to each insurer under §2210.074 shall be determined in the manner used to determine the insurer's participation in the Association for that year under §2210.052. The Insurance Code §2210.075(a) provides that a member insurer may elect to purchase reinsurance to cover an assessment for which the insurer would otherwise be liable under the Insurance Code §2210.074(b). The Insurance Code §2210.075(b) provides that an insurer choosing not to purchase reinsurance remains liable for its assessment under the Insurance Code §2210.074(b). Section 2210.151 authorizes the Commissioner to adopt the Association's plan of operation to provide Texas windstorm and hail insurance coverage in the catastrophe area by rule. Section 2210.152 provides that the Association's plan of operation provide for the efficient, economical, fair, and nondiscriminatory administration of the Association and include both underwriting standards and other provisions considered necessary by the Department to implement the purposes of this chapter. Section 2210.259 requires the Association to assess a 15% premium surcharge on a noncompliant residential structure insured by the Association as of September 1, 2009, under Section 2210.251(f) that had been approved for insurability under the approval process regulations in effect on September 1, 2009 and to deposit the premium surcharge in the CRTF. Section 2210.259 further provides that the premium surcharge is a separate nonrefundable charge in addition to the premiums collected and is not subject to premium tax or commissions. Section 2210.452 requires the Commissioner to adopt rules under which the Association makes payments to the CRTF including the net gain from operations of the Association at the end of each calendar year or policy year; and the procedure relating to the disbursement of money from the trust fund to the Association to fund the obligations of the trust fund under Subchapter B-1, Chapter 2210, Insurance Code. Section 2210.452(b) further provides that the comptroller, as custodian of the trust fund, shall administer the trust fund strictly and solely as provided by Chapter 2210, Insurance Code and Commissioner rules. Section 2210.452(d) provides that the trust fund may be terminated only by law and that on termination of the trust fund, all assets of the trust fund revert to the state to provide funding for the mitigation and preparedness plan established under the Insurance Code §2210.454. Section 2210.453 provides that the Association may purchase reinsurance that operates in addition to or in concert with the CRTF, public securities, financial instruments, and assessments authorized by Chapter 2210, Insurance Code. Section 2210.604 requires that the Commissioner approve an Association request to the Texas Public Finance Authority for the issuance of class 1, class 2, or class 3 public securities. Section 2210.608 provides how the Association may use public

security proceeds and excess public security proceeds. Section 2210.609 provides that the Association shall repay all public security obligations from available funds, and if those funds are insufficient, revenue collected in accordance with the Insurance Code §§2210.612, 2210.613, and 2210.6135. Section 2210.609 further provides that the Association shall deposit all revenue collected under §§2210.612, 2210.613, and 2210.6135 in the public security obligation revenue fund and further provide for the payment of the public security obligations and the public security administrative expenses by irrevocably pledging revenues received from premiums, premium surcharges, and amounts on deposit in the public security obligation revenue fund, together with any public security reserve fund. Section 2210.611 establishes that the Association may use premium surcharge revenue collected under the Insurance Code §2210.613 in any year that exceeds the amount of the public security obligations and public security administrative expenses payable in that year and interest earned on the public security obligation fund to (i) pay public security obligations payable in the subsequent year; (ii) redeem or purchase outstanding public securities; or (iii) make a deposit in the CRTF. Section 2210.612 provides that the Association shall pay class 1 public securities issued under §2210.072 from its premium and other revenue. Section 2210.613 provides that the Association shall pay class 2 public securities issued under §2210.073 with premium surcharges and member assessments as provided by §2210.613. Section 2210.6135 provides that the Association shall pay class 3 public securities issued under §2210.074 as provided by §2210.6135 through member assessments. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

§5.4111. Operation of the Catastrophe Reserve Trust Fund.

(a) In General.

(1) The comptroller shall administer the catastrophe reserve trust fund in accordance with Insurance Code Chapter 2210, and this subchapter.

(2) The comptroller shall ensure that all money received from the Association pursuant to subsection (b) of this section is deposited with the trust company in the catastrophe reserve trust fund.

(3) The trust company shall receive, disburse, invest, hold, and manage all money deposited in the catastrophe reserve trust fund.

(4) All money, including investment income, deposited in the catastrophe reserve trust fund is state funds to be held by the comptroller outside the state treasury on behalf of, and with legal title in, the department until disbursed as provided by the Insurance Code Chapter 2210 and this subchapter.

(b) Payment of Funds to the Catastrophe Reserve Trust Fund.

(1) Except as provided by statute, on an annual basis, the Association shall pay the net gain from operations of the Association directly to the comptroller for deposit with the trust company in the catastrophe reserve trust fund.

(2) In a time period acceptable to the trust company and the comptroller, but not more frequently than monthly, the Association shall pay all premium surcharges collected under the Insurance Code §2210.259 during the preceding period and accumulated investment income on those premium surcharges directly to the comptroller for deposit with the trust company in the catastrophe reserve trust fund. Premium surcharges collected by the Association pursuant to the Insurance Code §2210.259 and investment income on those funds are not gross premium or other revenue of the Association and must be accounted for separately from the Association's gross premium and other revenue.

(3) As necessary, the Association shall pay directly to the comptroller for deposit with the trust company in the catastrophe reserve trust fund all:

(A) excess public security proceeds resulting from the Insurance Code §2210.608;

(B) excess premium surcharges resulting from the Insurance Code §2210.611 and §5.4144 of this subchapter (relating to Excess Class 2 Premium Surcharge Revenue); and

(C) excess member assessments resulting from §5.4145 and §5.4147 of this subchapter (relating to Excess Class 2 Member Assessment Revenue; and Excess Class 3 Member Assessment Revenue).

(4) All deposits received by the trust company under this subsection shall be deposited in the catastrophe reserve trust fund immediately upon receipt.

(c) Disbursements from the Catastrophe Reserve Trust Fund.

(1) Prior to a disbursement of funds from the catastrophe reserve trust fund other than a disbursement under paragraph (3) of this subsection, the department must determine that:

(A) a catastrophic event has occurred; and

(B) the catastrophic event has resulted in losses in excess of available reinsurance proceeds.

(2) To disburse funds from the catastrophe reserve trust fund in response to a catastrophic event, the commissioner or an authorized representative of the department shall issue a letter of instruction to the trust company, specifying the amount of money to be disbursed in immediately available funds and specifying any third party payee.

(3) To disburse funds from the catastrophe reserve trust fund to pay for costs associated with maintaining or managing the catastrophe reserve trust fund, the commissioner or an authorized representative of the department shall issue a letter of instruction to the trust company specifying the amount of money to be paid and specifying any third party payee.

(d) Maintenance of the Catastrophe Reserve Trust Fund.

(1) In maintaining and managing the catastrophe reserve trust fund, the trust company shall be charged with the duty of care, which applies to the comptroller as trustee of funds in the treasury.

(2) The department shall pay the trust company an amount sufficient to reimburse the trust company for the actual monthly costs of administering and maintaining the catastrophe reserve trust fund. The trust company shall deduct the appropriate amount directly from the earnings of the catastrophe reserve trust fund and advise the department monthly in writing of the amount of these costs.

(3) The trust company shall submit to the department a report of all transactions relating to the catastrophe reserve trust fund promptly after the end of each month. The trust company shall furnish other information relating to the catastrophe reserve trust fund as the department may reasonably request from time to time.

(4) The trust company is required to keep a book of records in which the complete and correct entries are made of all transactions relating to the receipts, disbursements, deposits, withdrawals and transfers in the catastrophe reserve trust fund in accordance with generally

accepted accounting principles. The records shall be available for inspection by an authorized representative of the department at all reasonable hours of the business day and under reasonable conditions.

§5.4121. Financing Arrangements.

(a) The Association may enter into financing arrangements. The financing arrangement must:

(1) enable the association to:

(A) pay losses under the Insurance Code §2210.072; or

(B) obtain public securities under the Insurance Code §2210.072.

(2) be approved by the Association's board of directors prior to the Association entering into the financing arrangement.

(b) The Association may pay a financing arrangement with:

(1) premiums and other revenue of the Association;

(2) reinsurance proceeds;

(3) the proceeds of any financing arrangement;

(4) the proceeds of any class of public security issued under Insurance Code Chapter 2210; and

(5) any other Association asset.

(c) As collateral security for such financial arrangements, including interest bearing loans or other financial instruments, the Association may grant in favor of the applicable market source a collateral assignment and security interest in and to all or any portion of the Association's assets, including without limitation, all or any portion of the Association's right, title and interest in and to all proceeds of any or all class 1 public securities, including commercial paper notes, class 2 public securities, and/or class 3 public securities, with the priority of each such collateral assignment and security interest, whether first or secondary, to be determined by the Association in its discretion.

§5.4131. Issuance of Public Securities.

(a) In the event that the Association reasonably estimates that a catastrophic event has occurred and that the catastrophic losses are estimated to exceed available catastrophe reserve trust funds and available reinsurance proceeds, the Association may request the issuance of public securities as set forth in this section. Each request for the issuance of public securities must be approved by the commissioner prior to the issuance of the public securities.

(b) The Association's request under subsection (a) of this section must be in writing and specify:

(1) the total estimated amount of catastrophic losses as of the date of the request;

(2) the reasonably practical maximum principal amount of public securities the Association is to request;

(3) the term of the public securities;

(4) the estimated amount of debt service for the public securities, including any contractual coverage requirement;

(5) the Association's current gross premium and other revenue; and

(6) the Association's current net revenues.

(c) In determining the reasonably practical maximum principal amount of public securities under subsection (b) of this section, the Association must consider:

(1) the Association's current gross premium and other revenue;

(2) the Association's current net revenues;

(3) the Association's obligations for outstanding public securities, including contractual coverage requirements;

(4) the Association's obligations for other financing arrangements; and

(5) market conditions and requirements necessary to sell the public securities with an investment-grade rating, including issuing classes in installments. The Association may rely on the advice and analysis of the TPFA in determining such market conditions and requirements and in determining the reasonably practical maximum principal amount of public securities.

(d) In considering the Association's request, the commissioner may rely on any statements or notifications of definitive or estimated losses, Association revenue, reinsurance proceeds, or any other related or supporting information, from any source, including the general manager of the Association and the TPFA.

(e) The Association may make one or more requests for funding under this section following a catastrophic event.

(1) The Association must request issuance of what has been determined to be the reasonably practical maximum principal amount of class 1 public securities before the Association may request issuance of class 2 and class 3 public securities.

(2) The Association must request issuance of what has been determined to be the reasonably practical maximum principal amount of class 2 public securities before the Association may request issuance of class 3 public securities.

(3) The amount of public securities being requested shall apply against the balance of the authorized amount of public securities for that class in the calendar year the public securities are requested, unless the written request specifically provides that:

(A) the public securities are to be issued in the subsequent calendar year; and

(B) the amount of public securities being requested shall apply against the balance of the authorized amount of public securities for that class in the year the public securities are actually issued.

(f) Upon receipt of the commissioner's written approval, the Association shall request the TPFA to issue the approved requested public securities.

(g) As provided in the Insurance Code Chapter 2210 the Association may enter into agreements as directed by the TPFA for the issuance, reissuance, refinancing, and payment of public security obligations and public security administrative expenses.

§5.4132. Texas Public Finance Authority Responsibilities Concerning Issuance of Public Securities.

Pursuant to Insurance Code, Chapter 2210, Subchapter M, the TPFA has the certain statutory obligations regarding the issuance of public securities on behalf of the Association, including:

(1) determining the terms of the public securities to best achieve the goals of the Association and result in borrowing at the lowest practical cost. Within the scope of the reasonably practical maximum principal amount, the TPFA may increase the maximum amount of the public securities to include amounts sufficient to:

(A) pay the cost of issuance;

(B) provide a public security reserve fund; and

(C) capitalize the interest on the public securities for the period specified by the Association;

(2) complying with any credit agreement, including a liquidity agreement issued by the Comptroller;

(3) as authorized in the Insurance Code Chapter 2210, issuing the requested public securities on behalf of the Association for the purpose of:

(A) financing and refinancing the Association program;

(B) paying and refinancing outstanding public securities of the same class; or

(C) paying and refinancing other financing arrangements;

(4) arranging for the issuance of commercial paper notes prior to a catastrophic event. The Association and the commissioner shall approve each tranche of commercial paper notes issued under a commercial paper program;

(5) establishing all necessary accounts with the trust company;

(6) together with the trust company and the comptroller, managing the obligation revenue fund, or funds, and the distribution of money to the various accounts in the public security obligation revenue fund, or funds, as necessary to fulfill the obligations of the TPFA and the Association under the Insurance Code Chapter 2210;

(7) informing the Association and the commissioner at least annually of the amount required to fund the outstanding public security obligations and the estimated amount of public security administrative expenses, including any required contractual coverage amount; and

(8) causing the public security proceeds to be delivered to the trust company for deposit into such funds and accounts as are necessary to fulfill the obligations of the TPFA and the Association under the Insurance Code Chapter 2210 and this section, including to:

(A) pay the costs of issuing the public securities and any administrative expenses related to the public securities;

(B) provide a reserve fund; and

(C) pay capitalized interest on the public securities.

§5.4141. Obligation Revenue Fund for the Payment of Class 1 Public Security Obligations and Operating Reserve Fund.

(a) While class 1 public securities are outstanding, all of the Association's net revenue shall be paid into the obligation revenue fund created for such class 1 public securities. The Association shall deposit the required amounts in the obligation revenue fund created for class 1 public securities at such periods as required under agreements with the TPFA.

(b) The operating reserve fund shall be held by the Association. If the class 1 public securities obligation revenue fund does not contain sufficient money to pay debt service on the class 1 public securities, administrative expenses on the class public securities, or other class 1 public security obligations, the Association shall transfer sufficient money from the operating reserve fund to the obligation revenue fund for class 1 public securities to make such payment.

§5.4144. Excess Class 2 Premium Surcharge Revenue.

(a) Revenue collected in any year from premium surcharges under the Insurance Code §2210.613 that exceeds the amount of class 2 public security obligations and class 2 public security administrative expenses payable in that year from premium surcharges and interest earned on the class 2 public security obligation fund may, in the discretion of the Association, be:

(1) used to pay class 2 public security obligations payable in the subsequent year, offsetting the amount of the premium surcharge that would otherwise be required to be levied for the year under the Insurance Code Chapter 2210, Subchapter M;

(2) used to redeem or purchase outstanding class 2 public securities; or

(3) deposited in the catastrophe reserve trust fund.

(b) As specified in the Insurance Code §2210.073(a), class 2 public securities may be repaid before their full term if the Association's board of directors elects to do so and the commissioner approves.

§5.4145. Excess Class 2 Member Assessment Revenue.

(a) Revenue collected in any year from a member assessment under the Insurance Code §2210.613 that exceeds the amount of class 2 public security obligations and class 2 public security administrative expenses payable in that year from member assessments may be:

(1) used to pay class 2 public security obligations payable in the subsequent year, offsetting the amount of the member assessment that would otherwise be required to be levied for the year under the Insurance Code Chapter 2210, Subchapter M; or

(2) used to redeem or purchase outstanding class 2 public securities.

(b) As specified in the Insurance Code §2210.073(a), class 2 public securities may be repaid before their full term if the Association's board of directors elects to do so and the commissioner approves.

(c) If options (1) and (2) of subsection (a) of this section have been fully satisfied, the excess member assessments may be deposited in the catastrophe reserve trust fund.

§5.4147. Excess Class 3 Member Assessment Revenue.

(a) Revenue collected in any year from a member assessment under the Insurance Code §2210.6135 that exceeds the amount of class 3 public security obligations and class 3 public security administrative expenses payable in that year from member assessments may be:

(1) used to pay class 3 public security obligations payable in the subsequent year, offsetting the amount of the member assessments that would otherwise be required to be levied for the year under the Insurance Code Chapter 2210, Subchapter M; or

(2) used to redeem or purchase outstanding class 3 public securities.

(b) As specified in the Insurance Code §2210.074(a), class 3 public securities may be repaid before their full term if the Association's board of directors elects to do so and the commissioner approves.

(c) If options (1) and (2) of subsection (a) of this section have been fully satisfied, the excess member assessments may be deposited in the catastrophe reserve trust fund.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2011.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. PRELIMINARY RULES

SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

31 TAC §§675.21 - 675.23

The Texas Low-Level Radioactive Waste Disposal Compact Commission ("Commission") adopts new Subchapter B, to be captioned "Exportation and Importation of Waste," including §675.21 to be captioned "Exportation of Waste to a Non-Party State for Disposal," §675.22 to be captioned "Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility," and §675.23 to be captioned "Importation of Waste from a Non-Compact Generator for Disposal," to be contained in Texas Administrative Code, Title 31, Part 21, Chapter 675, governing export and import of low-level radioactive waste and fees associated with those activities. Sections 675.21, 675.22, and 675.23 are adopted *with changes* to the proposed text as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10425).

The Commission is deferring action at this time on §675.24 ("Importation of Waste from a Non-Compact Generator for Management") as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10425).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rules implement provisions under the Texas Low-Level Radioactive Waste Disposal Compact (the "Compact") ratified by an Act of the Texas Legislature and signed into law by Governor Ann Richards in 1993. The Compact is codified under Texas Health and Safety Code §403.006.

The purpose of the Compact is to provide a framework for a cooperative effort to limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste and to encourage the reduction of the generation thereof. A further purpose is to encourage cooperation among the party states in the protection of the health, safety, and welfare of their citizens, and to distribute the costs, benefits, and obligations among the party states, all in accordance with the terms of the Compact.

Under §3.05 of the Compact, the Commission is authorized to adopt rules necessary or appropriate to carry out the terms of the Compact. The purpose of new Subchapter B, "Exportation and Importation of Waste," is to set out the procedures and criteria for the consideration of petitions for export and import agreements, and establish fees associated with evaluating and processing export petitions and import agreements. While the Commission is currently expressly authorized to grant export petitions and import agreements by a majority vote of the Commission under the existing terms of the Compact including §3.05(6) and §3.05(7), the adopted rules clarify the procedure for consideration of export petitions and import agreements and set appropriate fees which will provide predictability to parties seeking permits and allow the Commission to more effectively manage the importation and exportation of low-level radioactive waste under the Compact.

PUBLIC COMMENTS

The Commission held a public hearing on the proposed rule on December 9, 2010 at the offices of Texas Commission on Environmental Quality (TCEQ) in Austin. The public comment period closed December 26, 2010, pursuant to TEXAS ADMINISTRATIVE CODE, Title 1, Chapter 91, §91.34. However, the Commission has considered and responded to all public comments postmarked on or before December 27 if mailed and all comments received electronically through December 27, 2010. The Commission received oral comments at its public hearing and numerous written comments. In addition to a number of individuals, the following groups and associations submitted comments: Advocates for Responsible Disposal in Texas ("ARDT"); Andrews Chamber of Commerce; Central Family Practice; Citizens Awareness Network ("CAN"); Department of Defense Executive Agent ("DODEA"); EnergySolutions; The University of Texas System Environmental Health & Safety Advisory Committee ("University of Texas EHSAC"); Glenrose Engineering, Inc.; League of Women Voters of Texas ("League of Women Voters"); Lowerre, Frederick, Perales, Allmon & Rockwell ("LFPAR"); Texas National Association for the Advancement of Colored People ("NAACP"); New England Coalition; Nuclear Sources & Services, Inc. ("NSSI"); Promote Andrews; Public Citizen, Inc.; ReEnergize Texas; Rocky Mountain Low-Level Radioactive Waste Compact ("Rocky Mountain Compact"); Save the Ogallala Aquifer; Lone Star Chapter of the Sierra Club ("Sierra Club"); Southwestern Low-Level Radioactive Waste Compact ("SWC"); Studsvik, Inc.; Sustainable Energy & Economic Development Coalition ("SEED"); Tennessee Valley Authority ("TVA"); Texans for Public Justice; Texas Black Bass Unlimited; Texas Commission on Environmental Quality ("TCEQ"); Texas State Representatives Rafael Anchia, Dennis Bonnen, Lon Burnam, Joaquin Castro, Byron Cook, Craig Eiland, Jessica Farrar, Pete Gallego, Tryon Lewis, Marc Veasey, and Armando Walle; Texas State Senators Juan Hinojosa and Kel Seliger; Vermont Citizens Action Network; Vermont Public Interest Research Group; and Waste Control Specialists LLC ("WCS"). Several commenters submitted similar or, in many cases, identical comments on a substantially similar version of the rule published in the February 12, 2010, issue of the *Texas Register* (34 TexReg 1028). Many of the comments received during the prior publication period were integrated into the version of the rule re-proposed in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10425). The Commission previously responded to those comments received on its February 2010 proposed rule in the June 2010 rule packet proposed for final adoption, which was considered, but not finally adopted, at the Commission's June 2010 meeting.

RESPONSE TO PUBLIC COMMENTS

The summaries and responses to comments appear below, organized by topic. General comments are discussed and then section specific comments are addressed. The Commission categorized general comments according to the following areas: general comments in favor of the rule; general concerns regarding importation of waste; disposal capacity; general environmental concerns; siting and licensing issues; long-term liability; blending/commingling; economics; sufficiency of funds and fees; enforcement and penalties; transportation issues; application process; timing of rules and rulemaking requirements; exportation; effective date of the rules; miscellaneous; and section-by-by section comments.

GENERAL COMMENTS IN FAVOR OF THE RULE

WCS, DODEA, Andrews Chamber of Commerce, Rocky Mountain Compact, University of Texas EHSAC, Studsvik, TVA, Texas State Senators Cook and Seliger, Texas State Representatives Castro, Eiland, Farrar, Gallego, Veasey, and Walle, and some individuals generally supported action on all or part of the proposed rules. ARDT and the University of Texas EHSAC support the importation rule if volume and curie capacity are reserved for party state generators and if the benefits accrue to Compact generators. WCS noted that importation will allow the Compact Facility to offer a stable and economical waste disposal service to Texas and Vermont generators and help solve a crisis affecting hospitals, universities, research centers, and other generators.

The Commission generally agrees with the comments. A core purpose of the rules is to preserve disposal capacity for Compact generators and to create economically viable options for waste disposal and management for Compact generators.

GENERAL CONCERNS REGARDING IMPORTATION OF WASTE

League of Women Voters, Texas Black Bass Unlimited, Texas State Senator Juan Hinojosa, Texas State Representatives Lon Burnam, Dennis Bonnen, and Rafael Anchia, NAACP, Sierra Club, ReEnergize Texas, SEED, Vermont Public Interest Research Group, New England Coalition, Save the Ogallala Aquifer, CAN, Vermont Citizens Action Network, LFPAR and numerous individuals generally questioned whether importation of low-level radioactive waste meets the purpose of the Compact and should be allowed. Some of these commenters questioned whether the importation of waste was consistent with the Compact and its legislative history, which they assert supports a ban or extensive limits on importation. Sierra Club commented that the proposed rules should consider alternatives to waste importation, and SEED believes that the potential liabilities associated with waste importation have been ignored.

The Commission disagrees with these comments. The Compact calls for the party states to cooperate in the protection of the heath, safety, and welfare of their citizens and the environment, and to effectively, efficiently, and economically manage low-level radioactive waste. Compact §3.05(6) expressly provides that the Commission may enter into an agreement with certain parties to allow the importation of low-level radioactive wastes into the Compact for management or disposal. Compact §3.05(7) allows for the exportation of waste from the Compact, upon petition approved by the Commission. The export and import clauses in the Compact were approved by the legislative bodies of Texas and Vermont, as well as the United States Congress and were signed by President Clinton. The potential liabilities of waste importation were considered by these legislative bodies in authorizing waste importation in the law and these liabilities are adequately addressed in the applicable radiation control and licensing laws.

The Commission believes that, pursuant to Compact §3.05(6)-(7), it may currently contract for importation of waste into the Compact and allow export of waste out of the Compact under existing state and federal law. This authority exists without adoption of the rules. A contract entered by the Commission is enforceable as a matter of state law. However, the Commission proposed rules pursuant to existing law to clarify how proposed importation agreements and export petitions may be evaluated and to outline the evaluation process and fees in a public and transparent manner. The framers of the Compact plainly granted the Commission the authority to regulate the importation and exportation of low-level radioactive waste, and these rules are intended to assist the Commission to carry out its duties under the Compact.

The adopted rules provide a process where the Commission can consider the import of low-level radioactive waste from outside the Compact in a manner that is consistent with the needs of the fiscal and capacity interests of the Compact generators. The rules state that "It is the policy of the Commission that any savings generated by importation accrue to the benefit of the party states." The procedures in the proposed rules allow the Commission to determine the impact of both export and import on the Compact given that both activities affect party state generators. After ensuring that the needs of Texas and Vermont generators are secured, the Commission will seek to provide that any importation translates into a savings to the low-level radioactive waste generators in Texas and Vermont.

It is important to note that §675.23 of the rules does not grant permission for any entity to import waste. Rather, by its adoption, the rule would implement procedures that the Commission would use to evaluate proposed importation agreements. Importation, if it should occur, would benefit the party states by lowering disposal costs for members of the Compact. The Commission reserves the right to grant or deny requested importation based on the terms of the Compact and the adopted rules.

LFPAR, SEED, Public Citizen, Save Ogallala Aquifer, Vermont Public Interest Research Group, New England Coalition, CAN, Vermont Citizens Action Network and an individual commented that the proposed importation rules do not comply with Vermont law that requires generators seeking to dispose of waste in the Compact Facility to indemnify the State of Vermont. The Commission generally disagrees with this assertion. While the Commission believes that the applicability of Vermont law to generators outside of Vermont is best addressed in the terms and conditions of import agreements that may be entered into by the Commission, §675.23(k) has been revised to require that an import agreement address the applicable provisions of Vermont law found at 10 V.S.A. §7066(e).

DISPOSAL CAPACITY

WCS, League of Women Voters, SEED, Public Citizen, Vermont Public Interest Research Group, New England Coalition, Save the Ogallala Aquifer, CAN, Vermont Citizens Action Network, Texas State Representative Lon Burnam, University of Texas EHSAC, Promote Andrews and numerous individuals submitted comments related to the disposal capacity of the Compact Facility. Some of these commenters expressed concern about whether adequate capacity exists in the Compact Facility for Compact generators and that action on the rules should be postponed until better information is available. League of

Women Voters commented about the lack of limitation on volume and types of wastes to be imported. Vermont Public Interest Research Group, New England Coalition, Save the Ogallala Aquifer, CAN, and Vermont Citizens Action Network emphasized the need for assurance that the disposal needs of Vermont will be met, particularly the decommissioned waste from the Vermont Yankee power plant. The University of Texas EHSAC expressed a desire that more recent waste volume data be considered.

The Commission generally agrees that disposal capacity for compact generators must be a consideration in the rule. Compact §3.04(11) specifies that shipments of low-level radioactive waste from all non-host party states shall not exceed 20 percent of the volume estimated to be disposed of by the host state during the 50-year period. As such, a core purpose of the rule is to ensure disposal capacity at the Compact Facility for compact generators. Section 675.23(b), (c) and (h) specifically address disposal capacity and require that disposal capacity for Vermont and Texas waste cannot be reduced by non-Compact waste.

Importantly, a Disposal Capacity Supplemental Report submitted by WCS and reviewed by the Commission concludes that there is significantly more disposal capacity than originally estimated in WCS's license application. When the WCS application for a low-level radioactive waste disposal license was prepared in 2003, the waste volume estimates were based on a 2000 study. WCS originally estimated that there would be 2.8 million cubic feet of low-level radioactive waste over the operating life of the Compact Facility, and received a license for the initial 15 years for 2.3 million cubic feet of low-level radioactive waste. Yet, compact generators now estimate that they will only need disposal capacity of 1.2 million cubic feet. Of course, waste volume estimates could be reduced further to the extent the Commission allows exportation. Further, low-level radioactive waste volumes have decreased over the past fifteen years due to better processing, and are expected to continue to decrease in years to come. Finally, WCS has stated that it expects that licensing amendments will also increase disposal capacity in future years.

The adopted rules address export and import of low-level radioactive waste as part of an overall "mass-balance" process to ensure the "economical management" of waste disposal for party state generators. Importation would fill an important gap in the amount of low-level radioactive waste originally estimated for disposal under the facility's license and the actual lower amounts of waste that compact generators now estimate that they will produce. Moreover, party state generators continue to export some of that waste to non-Compact facilities for disposal. Additionally, the Commission has been publicly notified by a Vermont Yankee official that the vast majority of decommissioning waste that would otherwise be sent to the Compact Facility and is appropriately accounted for in current estimates may not be sent there under the present license conditions due to the excessive cost that the utility cannot afford. As importation is considered, the Commission will determine the capacity that Texas and Vermont must have to ensure that a surplus of capacity exists to allow importation.

GENERAL ENVIRONMENTAL CONCERNS

League of Women Voters, NAACP, Sierra Club, SEED, Texas State Senator Juan Hinojosa, Texas State Representative Lon Burnam, Glenrose Engineering, Inc., Promote Andrews and numerous individuals raised general issues related to long-term risks to health, safety and the environment or liabilities to the State of Texas associated with the importation and transportation of low-level radioactive waste for disposal.

The Commission generally disagrees with these comments. The TCEQ is responsible for the review and consideration of health, safety and environmental impacts of the Compact Facility. An extensive environmental analysis was conducted by the TCEQ as part of the licensing process of the WCS disposal facility. No low-level radioactive waste can be disposed into the compact disposal facility unless it meets the criteria of the license issued by the TCEQ. The license issued by the TCEQ specifies the amount of waste that can be disposed of in the Compact Facility and stipulates the waste types and forms that can be accepted and requires financial assurance to be posted by the Compact Facility operator sufficient to protect the public from waste disposal liabilities. The types of waste, the monitoring and certification processes, and the permitting of the waste is determined by the license issued by the TCEQ. The rules regulating importation and exportation are designed to ensure that the management and disposal of low-level radioactive waste are handled consistently with the license granted by the TCEQ. Transportation issues are discussed below.

SITING AND LICENSING ISSUES

Promote Andrews, LFPAR, and numerous individuals raised concerns related to the licensing and adequacy of the Compact Facility, including issues related to public safety, hydrology, seismic activity and geology of the site, choice of disposal and storage mechanism, and conditions at the facility. One commenter suggested that the disposal facility operator should apply for and obtain a license amendment with the TCEQ before accepting imported waste.

The Commission disagrees with the commenters because it has no authority in the Compact Facility licensing process. The TCEQ administers the licensing process, which includes the design of the facility and site investigation. In particular, issues regarding the safety, hydrology, geology and seismic activity at the Compact Facility site were addressed during the TCEQ licensing process. The environmental assessment related to groundwater hydrology can be found in Section 6.6 of the TCEQ's comprehensive environmental assessment of the site. Actual acceptance of waste at the Compact Facility, including imported waste, can only occur with approval of TCEQ. The rules that are the topic of this rulemaking rely on the adequacy of the site as previously determined by the TCEQ.

LONG-TERM LIABILITY

Several commenters, including the League of Women Voters, NAACP, Sierra Club, Glenrose Engineering, Inc., Promote Andrews, Texas State Representative Lon Burnam, Texas State Senator Juan Hinojosa and numerous individuals, raised concerns related to the long-term financial liability that the State might incur as a result of the importation of waste. Andrews Chamber of Commerce commented that the failure to allow proper disposal of low-level radioactive waste in the Compact Facility ignores the risks of storage of the waste in its present location.

The Commission disagrees that these comments warrant any changes to the adopted rules. Issues related to long-term care and liability of the facility are within the jurisdiction of the TCEQ. Texas Health and Safety Code §§401.109, 401.241 and the Compact Facility license issued by the TCEQ require the Compact Facility operator to post financial security to cover the long-term liabilities of the disposal of waste at the

Compact Facility. Texas Health and Safety Code §401.211 maintains the liability of the license holder for acts or omissions performed during facility operations. The Commission relies on the adequacy of the security as previously determined by the TCEQ. Additionally, §8.03 of the Compact states that no party state acquires any liability, resulting from the siting, operation, maintenance, long-term care, or any other activity relating to the Compact Facility. The rule provides a statement concerning the impact to the State of Texas. The APA requires a five-year analysis of the financial impact, which has been provided.

BLENDING/COMMINGLING ISSUES

Promote Andrews and several individuals raised concerns related to the potential for commingling of waste sent outside the Compact and then returned to the Compact.

The Commission agrees that commingling of waste is a relevant issue. State and federal rules currently exist that prevent waste from losing its identity and characteristics by mixing it with other waste. The Commission's ability to monitor the export and subsequent return of waste for storage is under §675.22. Commingling is specifically addressed in §675.22(b)(2) and at §675.22(c)(2). In particular, new §675.22(c)(2) requires generators and processors to certify that waste exported for management has not been down-blended or blended, mixed or commingled with low-level radioactive waste that was not generated in the party states, except for waste incidental to processing, and not to exceed 5 percent of the total activity.

ECONOMICS

Sierra Club, SEED, and numerous individuals commented on how the rules may affect the economics of the Compact Facility, generators and Andrews County.

The Commission has noted this comment. Section 675.23(h)(3), (4), (6) and (11) of the proposed import rules requires the Commission to consider the impact of the proposed import on the viability of the Compact Facility and the benefits and impacts on the compact generators.

While revenue from low-level radioactive waste importation would increase the amount of gross receipts paid to the State of Texas general revenue fund, exportation of low-level radioactive waste would have the opposite effect. Texas and Andrews County are financial partners in the Compact Facility with 10% of every dollar of gross receipts being divided evenly between the State of Texas and Andrews County. Importation of low-level radioactive waste at reasonable levels could increase annual receipts to Texas and Andrews County by several million dollars. Andrews County would additionally benefit from reasonable importation as a result of the economic impact of the Compact Facility operator's investment in the Compact Facility. Without importation, the Compact Facility would not be economically viable, and jobs and other economic benefits to Andrews County and the State would be lost.

SEED questioned the basis of the economic analysis included in the proposed rule. The Commission has appropriately assessed the fiscal impacts and costs analyses in accordance with the requirements of the APA based on the data and other information available to it.

SUFFICIENCY OF FUNDS AND FEES

Promote Andrews, ARDT, League of Women Voters, Sierra Club, NSSI and numerous individuals commented on Commission resources generally. Sierra Club and numerous individuals questioned the adequacy of the fees to cover necessary expenses. The League of Women Voters recommended that the Commission set sufficient fees to cover the costs of the Commission's activities. ARDT recommended clarification that the fees assessed for export petitions will be nominal administrative fees and questioned the authority for export fees (discussed under §675.21(d)). NSSI complained that surcharges were not applicable to management of low-level radioactive waste and that the rules gave the Commission too much discretion in setting fees, particularly with regard to the recovery of consultant and attorney fees.

Generally, the Commission disagrees with the comments. One of the purposes of the rules is to establish fees to support the evaluation of export petitions and proposed importation agreements, as specified in the adopted rules. New §675.21(l) and §675.23(o) specify that the Commission must have adequate resources before it can commence review of export petitions and import agreements. The Commission believes the funds generated by the fees will provide the necessary resources to the Commission. The Commission is financed at the outset by pro rata payments from the member states of the Compact and is currently receiving general counsel from the Texas Office of Attorney General. The Commission has the resources to conduct meetings with the monetary and personnel assistance provided by Texas and Vermont and the contributions in time of each of the Commissioners. During operation of the Compact Facility, the Commission will be supported by fees paid by companies using the Compact Facility.

PENALTIES AND ENFORCEMENT ISSUES

The League of Women Voters, NSSI and an individual commented on penalties and enforcement issues. The League of Women Voters encouraged strict fines and vigorous enforcement for violators of the Commission's rules. NSSI complained that penalties and surcharges were not applicable to management of low-level radioactive waste and that the rules gave the Commission too much discretion in setting penalties.

The Commission does not necessarily disagree with these comments, but must balance these concerns. Pursuant to Compact §6.03, the Commission is generally authorized to prohibit importation of waste and impose surcharges for violations of rules related to the importation of waste for management or disposal. Accordingly, the adopted rules allow the Commission to enforce its rules and penalize violators for failing to follow applicable requirements related to the importation or exportation of waste for disposal. As discussed above, the Commission is deferring action on §675.24 related to the importation of waste for management.

TRANSPORTATION ISSUES

Texas State Representative Lon Burnam, League of Women Voters, NAACP and numerous individuals commented on concerns related to the transportation of low-level radioactive waste into the Compact for disposal or management. Some individuals requested that public hearings be conducted in their communities due to the fact that waste shipments could occur on any major Texas highway.

The Commission disagrees with these comments. Regulating the transportation of low-level radioactive waste and nuclear waste is not within the jurisdiction of the Commission. However, the Commission observes that, presently, there are thousands of daily intrastate movements of radioactive materials and low-level radioactive waste, and no specific incidents have

been identified regarding the transportation of those wastes, or why interstate transportation would involve any greater risks than those already present. It is unnecessary, and would be impossible, for the Commission to hold public hearings in every community that assumed they were affected by the transportation of low-level radioactive waste. Comments regarding banning radioactive material on Texas highways should be addressed to the Texas Department of State Health Services or the U.S. Department of Transportation.

APPLICATION PROCESS

The League of Women Voters commented that there needed to be oversight of the application process.

The Commission agrees that public comment on applications for export petitions and import agreements is appropriate. The rules provide for publication of proposed export petitions and import agreements in the *Texas Register* and for public comment. The public comment period of 60 days provides substantial time for the public to comment on proposed import agreements. This period will provide the public with the opportunity to have input on the application process.

TIMING OF THE RULES AND ADMINISTRATIVE PROCEDURE ACT REQUIREMENTS

EnergySolutions, League of Women Voters, Texans for Public Justice, NAACP, Texas Black Bass Unlimited, Texas State Representatives Lon Burnam, Rafael Anchia, Dennis Bonnen, Texas State Senator Juan Hinojosa, SEED, Public Citizen, Vermont Public Interest Research Group, Save the Ogallala Aquifer, New England Coalition, CAN, Vermont Citizens Action Network, Sierra Club, ReEnergize Texas, Promote Andrews, and LFPAR argue that the rules have not been adequately deliberated and need more consideration and analyses required by the Administrative Procedure Act ("APA").

On the other hand, WCS notes that the current rules are the result of an 18-month process starting in July 2009, and that they have been thoroughly reviewed, debated, and amended to account for public comments and Commissioner concerns. Texas State Representatives Pete Gallego, Jessica Farrar, Joaquin Castro, Marc Veasey, Armando Walle, and Craig Eiland requested prompt action on the proposed to rules to allow the matters to be fully considered by the 82nd Legislature.

The Commission agrees that these rules and any other should be undertaken with careful deliberation to ensure relevant issues are addressed to the extent practical. The Commission believes it has thoroughly considered and analyzed the proposed rules through an extensive deliberative process. This process included initial publication of a similar version of the new rules in the February 12, 2010, issue of the *Texas Register,* with 60 days to receive public comment, two public hearings, a public rules committee meeting, and deliberation among the Commissioners during meetings with the opportunity to hear additional public comments on the original proposed rules. Those proposed rules were withdrawn in June 2010 to allow §675.23 to be separated into §675.23 and §675.24 as an improved manner of addressing importation for management and for disposal. The current version of the rules incorporated suggestions from the original rulemaking and was re-proposed and published for public comment in the November 26, 2010, issue of the *Texas Register.* An additional public hearing on the current rules was held December 9, 2010 in Austin and additional public comment was taken. Many of the comments submitted on the original rules were substantially similar to those submitted on the re-proposed version of the rules and were also addressed and considered prior to and during the Commission's June 2010 meeting.

The rulemaking has been conducted in full compliance with the Texas APA. The preamble to the proposed rules explains why the rules are not a "major environmental rule" as defined under Texas Government Code §2001.0225. All required fiscal and impact analyses have been conducted and the Commission followed all APA notice and publication requirements. The Commission believes that the issues addressed by the rules have been fully considered, analyzed and debated and that the rules help fulfill its duties under the Compact.

Several commenters, including Texas State Representative Lon Burnam, suggested that the fiscal impact statement connected with the rule was inadequate or did not adequately account for long-term liabilities.

The Commission disagrees with these comments. The rule provides a statement concerning the Impact to the State of Texas, local employment and public benefits. The APA requires a 5-year analysis of the financial impact, which was provided in the proposed rule preamble. The TCEQ, which is the licensing agency for the Compact Facility, has considered State of Texas liability and mitigation of the facility in the licensing process.

The rule proposal also provided an assessment to the impact of local employment in Andrews County where the Compact Facility is located. The assessment states that there is a potential that the exportation of low-level radioactive waste from the party states may reduce the number of personnel that the WCS facility employs. Importation of low-level radioactive waste from non-party states would have the opposite effect. The rule provides for review of the impact to the host state, the host county and the facility operator when considering export and import petitions. These provisions are found in §675.21(f)(4) and §675.23(h)(4) of the rules.

Sierra Club and some individuals commented that the Commission lacks resources to undertake this rulemaking and that the Chairman should not prepare the fiscal analysis. The Commission disagrees with these comments. The Commissioners have spent untold hours since July 2009 in considering the issues related to the export and importation of waste and are well qualified and prepared to undertake this rulemaking. Chairman Ford has examined the associated fiscal impacts in consultation with other members of the Commission and based on input from the public in full compliance with the APA.

SEED, Public Citizen, Save Ogallala Aquifer and several individuals commented that the public comment period should have ended on December 27, 2010 instead of December 26, 2010. The public comment period was appropriately determined by the Secretary of State in accordance with TEXAS ADMINISTRATIVE CODE, Title 1, Chapter 91, §91.34. Comments postmarked on or prior to December 27 and electronic comments received on December 27, 2010, however, have been considered by the Commission.

Promote Andrews commented that the e-mail address provided by the Commission as an alternate means for the submission of comments was not working during the entire public comment period. The Commission provided this e-mail address as courtesy to the public, and the e-mail address was promptly fixed once the issue was brought to the Commission's attention. The public was able to resubmit any public comments during the public comment period using the e-mail address that was provided in the proposed rule, or the alternate e-mail address posted on the

Commission's web site, or using hand, fax or mail delivery to the Commission's offices. Over 5,600 comments were received by the Commission by e-mail, including over 70 comments by members of Promote Andrews.

EXPORT GENERALLY

Several commenters, including Sierra Club, ARDT, Rocky Mountain Compact and various individuals offered general support for the exportation rule. The Commission agrees that the rule addressing exportation should be adopted. Export is currently occurring under petitions granted by the Commission pursuant to Compact §3.05(7). Rules to control exportation clarify the process the Commission will use to evaluate an export petition and encourages the economical management and disposal of low-level radioactive waste.

EFFECTIVE DATE

Studsvik and NSSI suggested that the Commission delay the effective date of the importation rules until the Commission has developed necessary forms for importation agreements and until it is prepared to administer the rules. Promote Andrews and numerous individuals ask that the Legislature have time to consider issues addressed by the rules. The Commission disagrees with the comments. The Legislature has already given the Commission the authority to enter into importation agreements and approve export permits, without any express rulemaking requirement, under existing law. Export petitions without standardized forms have already been approved pursuant to Compact §3.05(7). Similarly, nothing would prevent a person to submit an import agreement with the Commission before the Commission finalizes its forms pursuant to Compact §3.05(6). The Commission expects to have rules promulgated and in place by the time the Compact Facility is in operation to allow for the evaluation of export permits and proposed importation agreements in a public and transparent manner.

WCS commented that it is important that these rules be passed now in order to provide clarity to WCS and the low-level radioactive waste marketplace on the rules for the exportation and importation of low-level radioactive waste.

The Commission agrees with this comment. WCS is set to begin construction of the Compact Facility in 2011. The TCEQ is presently reviewing the WCS rate application. The ratemaking process requires that assumptions be made about the volumes and types of wastes to be received by WCS when it is open for business, which is expected to be during the Fall of 2011. These rules are an important and necessary step required for the setting of reasonable rates. Thus, there should be no delay in the effective date for these rules to take effect. Texas State Representatives Pete Gallego, Jessica Farrar, Joaquin Castro, Marc Veasey, Armando Walle, and Craig Eiland also have urged prompt action on the rules prior to the 82nd Legislative Session.

MISCELLANEOUS

The Rocky Mountain Compact commented that the Compact is not "an instrumentality of the party states" as noted in the preamble to the proposed rules, but rather a "legal entity separate and distinct from the party states" as specified in §3.03 of the Compact. The Commission agrees that the Compact is authorized under and its legal status is defined by the terms of the Compact.

The League of Women Voters recommends that an advisory panel be implemented to assist the Commissioners in decision-making. Others suggested that a State Auditor should conduct independent analyses. The Commission disagrees with this comment. There currently is no provision for the creation of an Advisory Panel or independent State Auditor in the Compact.

EnergySolutions commented that restrictions on waste export could infringe on existing contracts. The Commission disagrees with this comment. The Compact has been state law since 1993 and federal law since 1998. Private contracts are subject to the terms and conditions of applicable laws. Moreover, the rules apply prospectively to import agreements or export petitions submitted after the effective date and would not affect existing export petitions, except in extraordinary circumstances. Finally, EnergySolutions' concerns are speculative as the Commission has not denied any request for export to the Clive, Utah facility.

An individual commented that the Commission should clarify whether the export and import rule provisions apply to low-level radioactive waste that is managed or generated by the federal government. The Commission responds that federal facility waste, as defined as TEX. HEALTH & SAFETY CODE, §401.2005(4), is not subject to the rules of the Commission, because it will be disposed of at the federal facility waste disposal facility pursuant to 42 U.S.C. 2021d(b)(2). The Commission has no jurisdiction over any facility established or operational exclusively for the disposal of low-level radioactive waste produced by the federal government. To the extent that the federal government generates low-level radioactive waste that is not classified as federal facility waste and is managed in the Compact Facility, such waste would be subject to the Commission's rules.

An individual commented that the Commission should clarify whether documents submitted to the Commission will be maintained as public records. The Commission responds that §3.03(2) of the Compact requires the Commission to maintain public records pursuant to the laws of the State of Texas.

SECTION-BY-SECTION COMMENTS ON §675.21

ARDT commented that the Commission should revise §675.21(b) to allow for the host state to petition for export permission, as authorized by the Compact §3.05(7).

The Commission agrees with this comment and has revised the proposed rule to reflect the actual wording of the law.

ARDT commented that generators should not be required to petition for an export permit to dispose of waste in non-compact disposal facilities if the waste cannot be accepted at the Compact Facility at the time it is ready for disposal.

The Commission disagrees with the comment. Nothing in the Compact requires the Commission to limit its regulation of low-level radioactive waste to only waste that can be disposed of in the Compact Facility.

ARDT suggested that the rule should be amended to allow party state generators to continue exporting under existing contracts.

The Commission disagrees with amending the rule. The Commission will honor existing export permits for the period of their effective term. No changes have been made to the rule as proposed.

ARDT and the University of Texas EHSAC commented that there is no authority for the Commission to impose export fees under the Compact. An individual requested that the Commission explain the legal basis for fees.

The Commission disagrees with these comments. The Commission's authority to impose reasonable fees on petitions for export and requests for import agreements stems from several sources under the Compact. The Commission is expressly authorized to manage the importation and exportation of low-level radioactive waste under Compact §§3.05(6)-(7), which includes the ability of the Commission to impose any term or condition on agreements and petitions as it deems advisable. It is specifically charged with monitoring the exportation outside of the party states of material which otherwise meets the criteria of low-level radioactive waste under Compact §3.05(8). And Compact §3.05(4) expressly authorizes the Commission to adopt rules necessary to carry out the terms of the Compact. The authority to adopt rules for the management of importation and exportation of low-level radioactive waste, and to adopt reasonable fees to support such functions, is fundamental to the Commission's duties under the Compact.

The authority to impose fees for exportation of waste is reasonable under the Compact. Because the Commission is ultimately responsible for approving petitions to export waste, for developing the terms and conditions for such exportation, and for monitoring the exportation of low-level radioactive material ultimately returned to Texas for disposal, the adoption of rules assessing fees is reasonably necessary to administer these requirements under the Compact. As the TCEQ noted in its adoption of rules related to the authority for the TCEQ to determine sufficient disposal rates: "These [TCEQ rate-setting] rules establish procedures the [TCEQ] will use to determine a disposal rate which may only be a component of a Commission disposal rate under the provisions of the [Compact]. The disposal rate subject to these rules does not include any surcharges, importation fees, or any other fees that may be assessed to waste from other entities that is contracted for disposal under the provisions of the [Compact]." 34 TexReg 1688, 1697 (March 6, 2009).

Fees connected to import and export are reasonably necessary to fulfill the Commission's express functions and duties. A core function of the Commission is to continuously project and manage the capacity of the Compact Facility to accept waste. The importation and exportation of waste directly affects the volume and efficiency of the Compact Facility. The assessment of fees on imported and exported waste is entirely consistent with the policy behind the development of low-level radioactive waste compact facilities. If Compact generators ship their waste to facilities outside the region, lost volumes and revenues needed to cover the operating costs will most likely be made up through supplemental fees and surcharges. Thus, to the extent a petition for the export of significant volumes affects the Commission's annual waste capacity projections and TCEQ's ratemaking functions, export petition fees are essential to the Compact's efficient management and disposal of low-level radioactive waste. In addition, contracts for the importation of a significant amount of waste, or petitions seeking permission to export substantial amounts of low-level radioactive waste outside of the party states, are likely to be administratively burdensome. Such agreements and petitions would require substantially more Commission time and resources to determine appropriate terms and conditions for import or export. In comparison, a similar administrative burden would not be expected with a contract or petition involving only *de minimis* amounts of low-level radioactive material. Nominal administrative and application fees based on the complexity of an application for import or export are therefore appropriate.

ARDT commented that it opposes any imposition of unit-based export fees of any kind.

The Commission neither agrees nor disagrees with the comment. Per-unit export fees are not part of the proposed rule.

ARDT and WCS raised concerns related to the timing and setting of fees.

The Commission disagrees with those concerns. The rule requires the upfront payment of application fees prior to substantial Commission action, along with the assessment and possible imposition of additional evaluation fees payable within 30 days of assessment. A petitioner may appeal the assessment of the fee by requesting a public hearing before the Commission within 30 days of the assessment.

An individual requested that the Commission elaborate on the procedural rules for a public hearing under §675.21(d)(2)(C) and questioned how a hearing in front of the Commission can be fair and impartial if the Commission has already decided the fee under §675.21(d)(2).

The Commission disagrees and notes that its procedural rules are adequately described in §675.21(d)(2). The hearing will provide an opportunity for the petitioner and the Commission to address any alleged deficiencies in the estimated fee.

DODEA commented that the federal government is prohibited from unauthorized commitment of funds availability and requested that the §675.21(d)(2) Export Petition Evaluation Fee be certain.

The Commission disagrees that this will cause a problem and considers that DODEA's concern is addressed by the existing language of §675.21(d)(2) that provides for an estimated fee to be communicated to the applicant prior to any action by the Commission. The Commission has no recourse to collect costs in excess of the estimated fee that is communicated to the petitioner.

The Rocky Mountain Compact requested the addition of the following language to §675.21(e): "For waste that will be exported to another low-level radioactive waste compact region, the petition shall be accompanied by a statement from the compact region where the waste will be disposed that import to that compact region is authorized."

The Commission disagrees with this comment. The Commission is only empowered with authority to authorize export and has no control over the requirements that authorities governing other compacts, or to wherever else the petitioner ultimately seeks to import, may impose upon the petitioner.

Sierra Club commented that §675.21(e) should read "The proposed export petition shall be accompanied by a certification by the disposal facility receiving the waste, the state regulator in charge of radioactive waste disposal and any Compact Commission that regulates exports and imports of waste in the receiving state that the waste acceptance criteria have been met."

The Commission disagrees with this comment. The Commission considers additional certification from state regulatory authorities to be duplicative, unnecessary, burdensome, and a potential source of undue delay. The Commission has already addressed its limited role in giving authority for the petitioner to export under this section and noted that it is not concerned with the requirements that other compacts may impose upon the petitioner.

Sierra Club commented that §675.21(e) should clarify that all members of the public, including the Compact Facility operator,

have 30 days in which to submit comments after an export petition appears in the *Texas Register.*

The Commission considers the existing language of §675.21(e) sufficient to address this comment.

Sierra Club commented that §675.21(e) should add the following: "The proposed export petition should also be accompanied by a certification from the TCEQ on whether or not the proposed wastes to be exported could currently be managed and disposed of in Texas by the Compact Facility Operator."

The Commission disagrees with this comment. The Commission considers a mandatory certification from TCEQ to be duplicative, unnecessary, burdensome, and a potential source of undue delay.

EnergySolutions suggested that the rule should be clarified to show how economic evaluation will be weighed in evaluating an export petition.

The Commission disagrees with the comment. The rule sufficiently details the criteria that will be considered by the Commission in its evaluation of export petitions.

ARDT requested that the 60-day waiting period under §675.21(f) be changed to 30 days, in part to deal with potential emergency export needs. The University of Texas EHSAC requested that the entire timeframe be shortened from a 60-day minimum waiting period and a 120-day maximum waiting period to a 45-day minimum waiting period and a 90-day maximum waiting period.

The Commission disagrees with these comments. The current timeframe is meant to allow sufficient time for public notice and comment. In extenuating circumstances, other measures could be taken by the Commission to ensure proper management of waste. No changes have been made to the rule as proposed.

Sierra Club suggested adding to §675.21(f)(3) "The Availability of the Compact Facility for the disposal of the waste involved, including whether or not the specific waste codes and volumes contemplated in the export petition would be allowed to be deposited in the Compact Facility as licensed by the TCEQ, and whether the petition is accompanied by a certification attesting to that information from the TCEQ."

The Commission disagrees with the comment, as the Compact Disposal Facility will be requested to provide such information on whether it is licensed by TCEQ as part of the existing language under §675.21(f)(3). The addition of a certification attesting to that information from TCEQ is duplicative, unnecessary, burdensome, and a potential source of undue delay.

ARDT commented that additional restrictions should be placed when there are "unresolved violations pending against the petitioner with another regulatory agency with jurisdiction to regulate radioactive material."

The Commission disagrees with this comment. The Commission, at the time of its deliberations, will evaluate the context, time frame and origin of any such sanctions.

EnergySolutions commented that this section addresses how the decisions the Commission will make with respect to export petitions, which is assumed to be by a majority vote. EnergySolutions commented that this should be specifically stated.

The Commission disagrees with this comment. This is an existing requirement under Compact §3.02 and §3.05(7).

ARDT commented that §675.21(h) should be changed to read that the Commission may impose any terms or conditions on the export permit that are appropriate "to carry out the policies and purposes of the Compact."

The Commission disagrees with this comment. The language in the rule is taken directly from the Compact law.

Sierra Club recommended that §675.21(i)(1) should impose an actual maximum limit, such as "export petitions can not authorize shipments of waste more than a year from the date a petition is approved."

The Commission agrees with this comment and will add a 12-month term limit to §675.21(i)(1).

ARDT requested the reporting date under §675.21(i)(3) be changed from October 31 to June 30.

The Commission disagrees with this comment. The Commission must submit annual reports to the party states and this deadline allows it to meet its deadlines. No changes were made to the rule.

Sierra Club commented that it is supportive of the provisions in §675.21(i)(3) requiring an annual report on the actual amount of waste exported by any party that has received approval of its export petition as well as the reporting requirements for waste generators exporting waste to another state for processing for eventual disposal at the Compact Facility because it will ensure Texas or Vermont waste is being managed properly in other states.

The Commission agrees with this comment.

ARDT requested that §675.21(i)(4) be rewritten to allow for transfer of an export permit under restructuring and purchase agreements.

The Commission disagrees with this comment. If the matter of ownership change is an issue, the export permit holder may approach the Commission for a permit amendment.

EnergySolutions suggests that §675.21(j) should reference applicable state regulations in addition to Nuclear Regulatory Commission ("NRC") regulations.

The Commission disagrees with this comment. It is unnecessary to cite to every applicable state regulation that is based on the NRC regulations.

Sierra Club comments that §675.21(l) states that no export petition can proceed until the Commission determines that it has enough resources to move forward. If the Commission does not believe it has sufficient resources, the rule should be delayed until the Commission has adequate resources.

The Commission disagrees with this comment. The Commission believes that the fees generated pursuant to these rules will provide such resources as are needed to process applications.

SECTION-BY-SECTION COMMENTS ON §675.22

ARDT commented that the title to this section should not include the second reference to "management" pursuant to Compact §3.05(8).

The Commission disagrees with this comment. Generators may export waste for processing which, in certain circumstances, ultimately results in disposal.

The Rocky Mountain Compact recommended the addition of the following language to §675.22: "For waste that will be exported to another low-level radioactive waste compact region, the pe-

tition shall be accompanied by a statement from the compact region where the waste will be disposed that import to that compact region is authorized."

The Commission disagrees with this comment. The Commission is only empowered with authority to authorize export and has no control over the requirements that authorities governing other compacts, or to wherever else the petitioner ultimately seeks to import, may impose upon the petitioner.

Studsvik supports the purpose of §675.22(a), but suggests that it should be clarified that "waste reduction" does not mean blending or dilution of waste as described in Texas Administrative Code, Title 30, §336.229 ("Texas Anti-dilution Rule"). Rather, Studsvik suggests that "waste reduction" should be clarified to mean reduction in waste volume consistent with the United States Nuclear Regulatory Commission's Policy Statement on Low-Level Waste Volume Reduction found at 46 Fed. Reg. 51100.

The Commission disagrees with the comment. The term "waste reduction" is specifically used in Compact §3.05(8).

EnergySolutions commented that §675.22(b)(1) and (2) both require that the location and name of the facility be provided, which appears duplicative.

The Commission agrees with this comment and has removed the reference to the location and name of the facility from §675.22(b)(1).

Studsvik commented that the term "blended" suggests a change in waste classification and could be construed to endorse activities subject to the Anti-Dilution Rule. It recommended using the term "commingled" rather than "blended" in §675.22(b)(2).

The Commission agrees with this comment.

Studsvik suggested that the rule should require applicants to certify their compliance with the Anti-Dilution Rule. Studsvik suggested that importers should be required to do so as well.

The Commission has this comment under consideration and is deferring action at this time. The Commission anticipates addressing it in a future rulemaking to address the issue of certified compliance with the Anti-Dilution Rule.

ARDT suggested that the rule should allow for *de minimis* amounts of commingling and/or blending, and that 1 percent is too low and arbitrary. EnergySolutions commented that the *de minimis* level should be set at 25-percent. The University of Texas EHSAC commented that the "one percent of total activity" standard is unreasonable and must be justified.

The Commission partly agrees and partly disagrees with the comments. Commenters have provided no technical basis for alternative values. The Commission considers 25-percent excessive. The rule has been changed to allow for 5-percent commingling. The rule provides that waste incidental to processing, and that does not exceed 5-percent of the total activity, can be commingled with the waste exported for processing. A 5-percent threshold is reasonable considering the nature of low-level radioactive waste and the desire to keep the potential commingling of wastes to a minimum.

ARDT commented that generators who ship low-level radioactive waste for processing and management typically have contracts with the processor and cannot control the management technique applied to the low-level radioactive waste. ARDT is concerned that the rule as written could effectively bar generators from utilizing commercial processing facilities or unfairly result in party state generators being required to seek permission from the Compact to import what is low-level radioactive waste generated in party states for disposal at the Compact Facility because of the manner in which the low-level radioactive waste was handled at a processor. ARDT is also concerned about requiring generators to certify that the waste has not been commingled by processors beyond a certain point. ARDT believes generators will not be in the position to make that certification without relying on what the processor certifies.

The Commission disagrees with the comment. Pursuant to Compact §3.05(8), the Commission must monitor the exportation of waste sent out of the Compact for processing or management. A reasonable means to fulfill this Commission duty is to require the generator and processors to certify that the waste has not been down-blended or blended, mixed or commingled with low-level radioactive waste that was not generated in the party states, except for waste incidental to processing.

SECTION-BY-SECTION COMMENTS ON §675.23

Sierra Club inquired into the duration of import agreement and what terms it might include.

The Commission notes that the rule tracks §3.05(6) of the Compact, and that the terms and conditions of an import agreement will vary depending on the circumstances.

TVA commented that the meaning of the Commission's policy statement is unclear. SEED commented that the stated policy that savings generated by importation accrue to the benefit of the party states "ring hollow" without a method of implementation.

The Commission disagrees with the comments. The intention of the policy statement is to ensure that all persons understand that out-of-compact generators will pay higher rates than compact generators. Clear language spelling out any savings or benefits of importation will be included in the individual importation agreements.

TCEQ and Sierra Club state that importation of waste to a Compact Facility can only transpire through an amendment to the Compact Facility's TCEQ license. It suggests that a new provision should state this explicitly.

The Commission disagrees with this comment. Nothing in the Compact Facility's license prohibits the Compact Facility from receiving imported waste. Instead, Compact Facility license R04100 Condition 8A governing the Compact Facility's Authorized Use states that "[r]eceipt is limited to Compact Waste and Federal Facility Waste as defined at Texas Health and Safety Code §401.2005." Health and Safety Code §401.2005 defines "Compact waste" as low-level radioactive waste that (A) is generated in a host state or a party state; or (B) is not generated in a host state or a party state but has been approved for importation to this state by the Commission under Section 3.05 of the compact established under Section 403.006." The licensee is responsible for ensuring that waste entering its facility complies with its license.

EnergySolutions commented that Commission should not consider importation of low-level radioactive waste until after the Compact Facility is operational and a new license is approved with increased capacity.

The Commission disagrees with the comment. The Commission is putting rules in place so that a transparent and public process is established by the time the Compact Facility is in operation.

Sierra Club supports the issuance of a report detailing disposal capacity, but commented that the rule lacked detail about the report. SEED notes more detail is necessary on total volume and requests further detail about how disposal capacity for Compact States will be protected.

The Commission disagrees with this comment and notes that the five-year report specified in §675.23(b) is only intended to provide guidance to the Commission regarding the current disposal capacity required for the party states and the excess capacity available for importation. The report will provide sufficient detail to make determinations about total volume and activity in the Compact Facility. New §675.23(b), (c) and (h) specifically address disposal capacity and require that disposal capacity for Vermont and Texas waste cannot be reduced by non-Compact waste.

CAN raised concerns as to whether there is the requisite capacity for Vermont's low-level radioactive waste needs. LFPAR notes that it is not clear how §675.23(c) will be enforced or how Vermont's disposal capacity will be unaffected.

The Commission notes this comment. New §675.23(b), (c) and (h) specifically address disposal capacity and require that disposal capacity for Vermont and Texas waste cannot be reduced by non-Compact waste. Further, the Commission notes that disposal capacity has increased since original projections were conducted in 2000.

League of Women Voters commented that the new rules should place limitations on the volume, level of curie and types of waste that can be imported.

The Commission does not agree that it has not taken the issues raised by the commenter into consideration. The types of waste, the monitoring and certification processes, and the permitting of the waste are determined by the Radioactive Materials License issued by the TCEQ. One of the core purposes of the rule is to ensure that imported waste meets the conditions of the license granted by TCEQ. No waste would be imported for disposal in Texas without approvals from the Commission. As such, imported low-level radioactive waste would be of the same type and subject to the same regulation as compact-generated waste. New §675.23(b), (c) and (h) specifically address disposal capacity as it relates to importation.

Sierra Club urged that there should be public participation or public input into the Compact Facility's recommendation of total annual volume for importation.

The Commission disagrees with the comment. Because the rules provide for public participation and public comment on import agreements, the public will have an opportunity for input on the annual volume recommendations. In addition, the annual volume recommendations will be informed by the annual host state report.

Representative Lon Burnam, SEED and TCEQ commented that TCEQ, and not the Compact Facility operator, should certify under new §675.23(c) and (g) whether the disposal of imported waste will reduce capacity for party state-generated waste or meet waste acceptance criteria. Public Citizen believes that the rules should be modified to require the Public Utility Commission to issue these certifications. Vermont Groups commented that there is a potential conflict of interest when the Compact Facility operator is allowed to certify that importation will not reduce volume reserved for the party states.

The Commission disagrees with the comments. The TCEQ has jurisdiction over the Compact Facility's license and it can ensure that the Compact Facility is in full compliance with the terms of its low-level radioactive waste license. However, the Commission has jurisdiction over importation and exportation of low-level radioactive waste, and there is nothing unique about these certifications that requires the TCEQ to make them. Similar certifications made by a facility operator are required under the Radioactive Substance Rules under Title 30, Chapter 336 of the Texas Administrative Code, and they are a means of holding the Compact Facility operator accountable for application representations. None of the commenters have explained why a Compact Facility's certification would be deficient. The Compact Facility also has the ability to certify to the Commission that it is in compliance with its own permit, and it is likely more aware of whether certain waste will meet the acceptance criteria of its license and the effect importation will have on its own facility's capacity at any given time. Further, because the commenters can provide comments on a request for import agreement, they have the opportunity to provide input on a Compact Facility's certification along with other licensing related issues included in the import application. Further, there is no statutory provision allowing the PUC to issue the certifications under these rules.

Sierra Club commented that import agreements should be with a single entity representing a specific location and waste type. Regions, states and the Compact Facility operator should be prohibited from entering into an import agreement. SEED notes that language concerning penalties should be inserted.

The Commission disagrees. The Compact explicitly states at §3.05(6) that the Commission may enter into an agreement with a person, state, regional body or group of states for the importation of waste. A person, as defined in the Compact at §2.01(14), includes any legal entity, public or private, which would include the Compact Facility operator. The rule as written provides for penalties ranging from an outright prohibition on disposing of waste at the facility to surcharges on shipments to the facility. The Commission retains the discretion to determine the type and amount of penalty.

The Rocky Mountain Compact suggests that waste shipments received from that Compact be accompanied by documents authorizing the export of the waste from that region.

The Commission agrees that all documents required to properly track the movement of radioactive waste shipments among the various Compacts and States is necessary. Section 675.23(b)(10) requires the Commission to consider the authorization of a person to export.

SWC recommends that §675.23(d) be amended to specify that the Commission will enter into an agreement with the generator. Diana Wheeler notes that the Compact Facility should be penalized for accepting LLRW that has not been approved for importation.

The Commission disagrees with this comment because the existing language of §675.23(d) is clear in this regard. Penalty provisions are provided in §6.03 of the Compact.

SEED requests that the form of agreement be described and made available and posted online before the rule is voted on. SEED further considers §675.23(n) to be insufficiently detailed.

The Commission disagrees that the form should be made available before the final vote on the rules. The form is a living doc-

ument that will be designed by the Commission or its staff after the final form of the rule is adopted.

The University of Texas EHSAC comments that the Commission lacks authority to assess the fees under §675.23(f)(1) and (3).

The Commission has addressed its authority to assess fees in the preamble to the proposed rule.

SEED requests a clarification on whether the Commission may accept petitions before adopting the fee schedule required by §675.23(f).

Import petitions may be filed with the Commission prior to the adoption of a fee schedule; however, no action will be taken on a petition until a fee schedule has been adopted pursuant to §675.23(f)(3) and all fees have been paid as required by §675.23(f)(2).

DODEA notes that the federal government is prohibited from unauthorized commitment of funds availability and requests that the evaluation fee be a sum certain.

The Commission does not believe that this causes any difficulties for federal petitioners. Section 675.23(f)(3) states that the expenses will be estimated. That estimated amount would be provided in advance to the prospective petitioner as a sum certain.

SWC commented that for small generators, a $500 application fee, an evaluation fee, and an import agreement fee may be cost-prohibitive and thus may discourage disposal. It encourages the Commission to consider setting a lower import application fee for generators of small volumes of waste similar to what it has done for those exporting small volumes.

The Commission disagrees with the comment. It has not been established that the fees will be excessive for small generators.

SEED, an individual and Sierra Club recommended that the TCEQ should provide the certification required by §675.23(g)(1), instead of the Compact Facility operator, WCS. Studsvik supports §675.23(g)(1) in its present form. LFPAR suggests the certification by the Compact Facility operator is an inappropriate delegation of the State's responsibility.

The Commission disagrees with commenters requesting TCEQ certification. The Compact Facility operator, as the license holder, is responsible for operating the facility in conformance with the conditions of the license. This includes compliance with the waste acceptance criteria. The TCEQ may audit the licensee to ensure compliance with its waste acceptance criteria through its inspection and enforcement function, as required. There is no obligation for the state to certify that imported waste meets the Compact Facility waste acceptance criteria. Therefore, §675.23(g)(1) is not an inappropriate delegation of any state responsibility.

Sierra Club recommends that §675.23(g)(4) - (7) be replaced by a more concise procedure for notice and timing of the agreement. LFPAR notes that §675.23(g)(6) might require the Commission to address comments.

The Commission disagrees with this comment and declines to adopt the proposed alternate language. The existing process takes into account the obligations and convenience of all stakeholders, including the Compact Facility operator, the petitioner, the public and the Commission, and provides adequate and timely notice to all parties.

SEED requests §675.23(g)(6) be amended to clarify the beginning date of the 60-day comment period referenced in (g)(5) of the rule.

The Commission agrees with the comment and §675.23(g)(6) has been amended as requested.

SEED notes that §675.23(g)(7) does not specify a date when the Commission must distribute the listed documents. LFPAR notes that this section is not clearly written.

The Commission agrees that the section does not clearly specify when these documents must be distributed. Section 675.23(g)(7) has been modified to clarify that the listed documents are distributed contemporaneously with the posting on the web site as specified in §675.23(g)(5).

ARDT commented that the Commission should take no action on an import agreement until after the 60-day comment period has expired. DODEA suggests the Commission meet every 120 days.

The Commission disagrees. The current proposed rule states in §675.23(h) that the Commission may not take any action within the first 60 days after the petition has been filed, during which time comments are being received.

SEED requests "factors" be changed to "criteria" in §675.23(h). Studsvik notes that the decision "criteria" in §675.23(h)(1) - (12) are appropriate and reasonable. The Vermont Group requests that the list of factors include consideration of Vermont's capacity needs. LFPAR notes the listed factors are too vague.

The Commission disagrees with the comment and believes the "factors" are sufficiently descriptive to allow a comprehensive review of the import agreement. The party states' capacity needs, including Vermont's, are considered in §675.23(h)(11).

LFPAR notes that an analysis will be required to determine whether imported waste contains "special nuclear material" and if a criticality accident is possible under 10 CFR §61.23(j).

The Commission disagrees with this comment because limitations on special nuclear material are set out in the license by the TCEQ. The Commission has no authority to limit special nuclear material in imported waste.

LFPAR notes that §675.23(h) should contain a factor addressing the compliance history of the Compact Facility.

The Commission disagrees with the comment. Assessment of the compliance history of the Compact Facility is the jurisdiction of the TCEQ. The Commission has no authority to establish compliance standards for the Compact Facility.

EnergySolutions commented that the Commission should describe for public comment how the economic evaluation under §675.23(h) will be accomplished, and further suggested that the Commission should receive approval from the exporting compact as part of the administrative controls.

The Commission disagrees with this comment. The Commission has broad discretion to determine how economic analyses will be conducted. Consideration of export approval from the exporting compact is required by §675.23(h)(10).

SWC comments that §675.23(h)(5) is confusing in that it implies that the TCEQ is involved in the importation agreement before the fact.

The Commission disagrees with this comment because the purpose of this section is to merely confirm that the Compact Fa-

cility is properly licensed to receive, manage and dispose of the waste.

The Commission disagrees that the rule needs more details as to the factors that will be considered. The consideration of the exporting compact's approval to export is considered at §675.23(h)(10).

The Sierra Club requests §675.23 be amended to add a factor addressing whether TCEQ has issued a certification that the current license allows for the volume, source and type of waste to be imported.

The Commission disagrees with this comment. Section 675.23(g)(1) requires the Compact Facility operator to certify that the waste acceptance criteria have been met for the proposed import.

Studsvik concluded that the decision criteria listed in §675.23(h)(1) through (12) are appropriate and reasonable, but it raised concerns regarding the timeline for petition approval. It suggests that the Commission streamline the import agreement review process. Alternatively, Studsvik encourages the Commission to delay the effective date of any import rule until such time as the Commission has appropriate procedures and administrative support in place.

The Commission disagrees with the comment. The consideration of the factors under §675.23(h) and allowing sufficient time for public comment and input requires Commission time. The 365-day review period is intended to provide some certainty to applicants for import agreements. Because export petitions and import agreements are currently authorized under the Compact and can be approved by a majority vote of the Commission, it is not necessary to delay the effective date of these rules. The rules are intended to provide transparency and ensure public participation in the process.

Public Citizen requests §675.23(h)(1) be amended to add a factor prohibiting the importation of foreign waste that has been re-packaged in another state. SEED wants to know how the Commission will identify international waste if it was processed in the United States and labeled as originating in the United States. LFPAR notes that it is not clear how the Commission will be able to enforce a prohibition on international imports.

The Commission disagrees with this comment because the importation of foreign waste is expressly prohibited in §675.23(a). Section 675.22 provides for tracking management of waste, including re-packaging. Shipping manifests require the waste processor to identify the original generator of the waste.

ARDT proposes additional language to allow consideration of the effect of an import agreement on compact disposal facility rates.

The Commission disagrees with this comment. The existing language allows the Commission to consider the economic impact of importation decisions.

Public Citizen and Nuke Free Texas believe that the Commission should set clear standards for denying import petitions. LFPAR notes that §675.23(i) does not state what recourse is available following a decision by the Commission.

The Commission disagrees with this comment. It has established clear standards for approving an import petition. Available avenues for appeal of the Commission's decision are set out in the Compact.

SEED is concerned that the use of the word "may" in §675.23(j) will allow the Commission to treat separate importers differently.

The Commission disagrees with this comment and notes that the Compact, as ratified by Congress, expressly uses the word "may" in Article III, §3.05(6) when authorizing the Commission to entertain import agreements.

TVA notes that §675.23(i)'s use of permissive language suggests that the Commission may not take any action on an importation agreement. It suggests language requiring action by the Commission on a petition for importation.

The Commission disagrees with this comment. The Commission retains the discretion to act in the best interests of the Compact.

Public Citizen commented that fees should be adequate to cover processing and potential cleanup costs. Non-compact states should be required to deposit $25 million prior to importing or exporting waste to the Compact Facility.

The Commission disagrees with this comment and notes that the decommissioning and long-term care funds are established and regulated by the TCEQ. The Commission has no authority to set financial standards for the decommissioning and long-term care fund. The process for states to join the Compact is described in Article VII of the Compact.

LFPAR notes that §675.23(k) does not specify the circumstances that may result in the revocation or cancellation of an importation agreement. Nuke Free Texas says reporting requirements should be better defined.

The Commission disagrees with this comment. The Commission has broad discretion to decide when to revoke or cancel an import agreement, or what is required to be reported to the Commission in the course of carrying out the requirements of the Compact.

DODEA suggests §675.23(l) be amended to allow payment by other than check or money order.

The Commission agrees with this comment and has amended §675.23(f)(1) to allow payment by Electronic Funds Transfer.

EnergySolutions suggested that reports under §675.23(l) should include information on costs and pricing for the imported waste received and disposed. SEED considers this section to be insufficiently detailed concerning information to be included in a quarterly report. SEED further suggests that the quarterly report should contain a TCEQ certification.

The Commission disagrees with this comment. The Commission has noted the comment on requiring costs and pricing information but has not made any changes to the rules at this time. There is no statutory requirement for a TCEQ certification of the quarterly report, thus the Commission disagrees with the suggestion that TCEQ certify the quarterly report.

Public Citizen urges §675.23(m) be deleted because it might allow generators to accept waste for storage.

The Commission disagrees with this comment because the cited section allows generators to store their own waste or dispose of it by alternate means under 10 CFR §20.2002.

LFPAR suggests that §675.23(n) is duplicative of §675.23(e). LFPAR suggests that this subsection should be sealed by a professional engineer.

The Commission disagrees with this comment. These sections are not duplicative in that subsection (n) has further detail about

the criteria to be considered in making a determination on an import agreement. There is no statutory or administrative requirement for a licensed professional engineer to sign the importation agreement form.

Sierra Club comments that §675.23(o) causes regulatory confusion because it does not establish under what scenario the Commissioners would determine if they had adequate resources. SEED suggests that the vote take place before the import rule is adopted and petitions are received. Further, the vote should be taken on an annual basis in conjunction with the budget review.

The Commission disagrees with these comments. The Commission believes the process by which the adequacy of resources is determined is sufficiently described in the rule to allow the Commissioners to make a reasoned decision on staff and financial resources.

LFPAR suggests that §675.23(o) contradicts §675.23(h).

The Commission disagrees with this comment. Any action taken by the Commission under §675.23(h) is subject to the financial resources of the Commission. This is consistent with the requirement for a finding of adequate resources under §675.23(o).

CONCISE RESTATEMENT OF STATUTORY PROVISIONS

New §675.21 is adopted under P.L. 105-236 and Texas Health and Safety Code, Chapter 403 (Compact §3.05(4)), which grants the Commission rulemaking authority to carry out the terms of the Compact, and under §§3.05(7), 6.01 and 6.03 of the Compact, which authorize the Commission to regulate the exportation of low-level radioactive waste and prohibit unauthorized exportation of waste.

New §675.22 is adopted under P.L. 105-236 and Texas Health and Safety Code, Chapter 403 (Compact §3.05(4)), which grants the Commission rulemaking authority to carry out the terms of the Compact, and under §3.05(8) of the Compact, which authorizes the Commission to monitor the exportation of waste for the sole purpose of management or processing.

New §675.23 is adopted under P.L. 105-236 and Texas Health and Safety Code, Chapter 403 (Compact §3.05(4)), which grants the Commission rulemaking authority to carry out the terms of the Compact, and under §§3.05(6), 6.02, and 6.03 of the Compact, which authorize the Commission to enter into an agreement for the importation of low-level radioactive waste into the compact for disposal and prohibit unauthorized importation of waste.

§675.21. Exportation of Waste to a Non-Party State for Disposal.

(a) Permit Required--No person shall export any low-level radioactive waste generated within a party state for disposal in a nonparty state unless the Commission has issued an export permit allowing the exportation of that waste pursuant to this rule.

(b) Petition Required--A generator, group of generators, or the host state proposing to export low-level radioactive waste to a low-level radioactive waste disposal facility outside the party states shall submit to the Commission a petition for an export permit.

(c) Form of Petition--The petition shall be in writing and on a form promulgated by the Commission and posted on the Commission's web page, or otherwise made readily accessible to generators and to the public.

(d) Petition Fees--

(1) Export Petition Application Fee--A non-refundable, application fee of $500 shall accompany the petition, except that petitioners seeking to export 100 cubic feet or less shall pay an application fee of $50. Payments shall be made by check, money order or electronic transfer, made payable to the Texas Low-Level Radioactive Waste Disposal Compact Commission. No action shall be taken on any petition until the application fee is paid in full.

(2) Export Petition Evaluation Fee. In accordance with a fee schedule adopted by the Commission, an export petition evaluation fee may be assessed based on the estimated time and expenses to be incurred in evaluating and acting on the petition, if the expense exceeds the export petition application fee. This estimated fee will be communicated to the applicant prior to any action by the Commission.

(A) The fee schedule will be based on the estimated cost of evaluating the petition and may include, but not be limited to, these factors:

(i) staff expenses;

(ii) supplies;

(iii) direct and indirect expenses;

(iv) purchased services of consultants such as engineers, attorneys or consultants; and

(v) other expenses reasonably related to the evaluation.

(B) This fee will be due and payable within 30 days of issuance of fee bill.

(C) A petitioner may appeal the assessment of the fee by requesting a public hearing before the Commission within 30 days of the assessment. Such hearing shall be held as soon as practicable after the request, but no longer than 45 days after the request is received by the Commission. The Commission's order shall be issued within 30 days after the hearing. If required by Commission order, payments are due within 30 days of the final order.

(e) Notice and Timing of Petition--A petitioner shall file an export petition with the Commission and receive approval by the Commission prior to export. The proposed export petition shall be accompanied by a certification by the disposal facility receiving the waste that the waste acceptance criteria have been met for the proposed waste importation. By electronic mail, the petitioner shall deliver to the Compact Facility operator a copy of the export petition (and any supplements or amendments thereto) at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. Upon receipt, the Commission shall post the export petition to the Commission's web site and to the *Texas Register.* Any comments by the Compact Facility operator on the export petition shall be filed in writing with the Commission no later than 30 days after the date the petition was received by the Commission. By electronic mail, the Compact Facility operator shall deliver to the petitioner a copy of all comments (and any supplements or amendments thereto) submitted to the Commission at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. The Commission shall distribute the export petition and comments received from the Compact Facility operator, petitioner, and public to other interested parties by mail or email for information and comment and shall post the export petition, comments received and other pertinent information on the Commission's web site. The Commission shall distribute the export petition and any comments received from the Compact Facility operator, or others, to the members of the Commission, and distribute comments from others to the Compact Facility operator and the petitioner.

(f) Review of Petition--After receiving the export petition and any comments that have been made thereon, the Commission at a meeting held no sooner than 60 days or later than 120 days after the date the export petition was filed with the Commission, shall act on the export petition utilizing the following factors:

(1) The volume of waste proposed for exportation, the type of waste proposed for exportation, the approximate radioactivity of the waste, the specific radionuclides contained therein, the time period of the proposed exportation, and the location and name of the facility, which will receive the waste for treatment and ultimate disposal;

(2) The policy and purpose of the Compact;

(3) The availability of the Compact Facility for the disposal of the waste involved;

(4) The economic impact on the Host County, the Host State, and the Compact Facility operator of granting the export permit;

(5) The economic impact on the petitioner;

(6) Whether the proposed disposal facility has authorization to import the waste into the region in which the disposal is to take place;

(7) The existence of unresolved violations pending against the petitioner with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the petitioner has unresolved violations;

(8) Any unresolved violation, complaint, unpaid fee, or past due report that the petitioner has with the Commission;

(9) Any relevant comments received from the Compact Facility, the petitioner, the Host County, the Host State, or the public; and

(10) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(g) Decision by the Commission--The Commission may take one of the following actions on the export petition, in whole or in part: approve the export petition; deny the export petition; or approve the export petition subject to terms and conditions as determined by the Commission and as ultimately documented in the export permit.

(h) Terms and Conditions--The Commission may impose any terms or conditions on the export permit as is determined by the Commission.

(i) Permit Duration, Amendment, Revocation, Reporting, and Assignment.

(1) An export permit shall be issued for the term specified in the permit and shall remain in effect for that term unless amended, revoked, or canceled by the Commission. The specified term in the export permit shall not authorize shipments of waste to occur more than 12 months from the date the export permit is issued.

(2) The Commission may, on its own motion or in response to a petition for amendment from the permit holder of an export permit for which prior written notice has been given to the permit holder and the Compact Facility operator, add or delete requirements or limitations to the permit. The Commission may provide a reasonable time to allow the existing permit holder to make any changes necessary to comply with the additional requirements or limitations imposed by the Commission.

(3) Not later than October 31 of each calendar year, a person who holds an export permit shall file with the Commission a report describing the amount and type of waste exported in the period from September 1 to August 31. The form of the report shall be prescribed by the Commission and shall be available on the Commission's web site, or may be obtained at a location that will be posted on the Commission's web site. Failure to timely file this report may result in denial of future export petitions.

(4) An Export Permit is not assignable or transferable to any other person.

(j) Agreements to Export--Nothing in this subchapter shall limit the authority of the Commission to enter into agreements with the United States, other regional compact commissions, or individual states for the exportation or management of low-level radioactive waste. Nothing in this subchapter shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, or its disposal pursuant to 10 CFR §20.302 (now 10 CFR §20.2002).

(k) Form of Export Permit--The Export Permit shall be on a form promulgated by the Commission and posted on the Commission's web site. The form may be amended by the Commission from time to time.

(l) Notwithstanding any other provision of this section, the Commission shall receive but will not begin to process applications for exportation of waste under this section by a compact generator to a non-party state for disposal until such time as the Commission determines by vote taken pursuant to §3.02 of the Compact as compiled at §403.006, Texas Health and Safety Code that it has adequate resources to properly examine applications prior to issuing permits and thereafter to enforce the terms and conditions of such permits as are issued. During the period between the adoption of this rule and the required determination pursuant to §3.02 of the Compact, permits granted pursuant to the resolution adopted by the Commission on December 11, 2009 will continue to be in effect. If, in the judgment of the Commission, circumstances warrant, new permits may be granted under the terms of that same resolution until such time as the Commission makes the required determination under §3.02 of the Compact.

(m) Definitions--Terms used in this subchapter shall have the meaning ascribed to them in the Compact.

§675.22. Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility.

(a) Where the sole purpose of the exportation is to manage or process the waste for recycling or waste reduction and return it to the party states for disposal in the Compact Facility, party state generators are not required to obtain an export permit; however,

(b) The generator shall be required to file a report with the Commission no later than 10 days after the shipment of the waste under subsection (a) of this section. Reports may be filed by facsimile or e-mail. A generator may satisfy the reporting requirement by timely filing with the Commission Forms 540 and 541 promulgated by the U.S. Nuclear Regulatory Commission, as applicable, with supplemental data indicating the types of waste management employed at the waste management facility. Alternatively, generator reports shall include the following information:

(1) The volume of waste proposed for exportation, the type, physical and chemical form of waste proposed for exportation, the approximate radioactivity of the waste, and the specific radionuclides contained therein;

(2) The location and name of waste processing facility(ies) receiving and processing the waste, the type of waste management employed at the waste management facility, whether the exported waste is mixed or commingled with waste from other generators.

(c) Upon return of the waste to the generator:

(1) The generator shall file a report informing the Commission of the volume, physical form and activity of the waste returned to the party state generator; and

(2) The generator and the processor shall certify that the waste has not been down-blended or blended, mixed or commingled with low-level radioactive waste that was not generated in the party states, except for waste incidental to processing, and that does not exceed 5-percent of the total activity.

§675.23. Importation of Waste from a Non-Compact Generator for Disposal.

(a) It is the policy of the Commission that any savings generated by importation accrue to the benefit of the party states. It is also the policy of the Commission that it will not accept the importation of low-level radioactive waste of international origin.

(b) Vermont's disposal capacity reserve is 20% of the Compact Facility maximum volume stated in the Radioactive Materials License dated September 10, 2009, as well as 20% of any additional maximum volume approved in a later license, and this capacity shall not be reduced by non-Compact waste. Such disposal capacity shall be established at least every 5 years by a report of the Commission. The Commission's report shall be informed by the annual report by the host State on the status of the facility, including projections of the facility's anticipated future capacity, and remaining radionuclide-specific radioactivity to comply with the Compact Facility Radioactive Materials License.

(c) No petition for an agreement to import low-level radioactive waste for disposal shall be granted by the Commission unless

(1) The Commission has issued a report on disposal capacity as required in subsection (b) of this section;

(2) The Compact Facility operator has provided to the Commission a recommended total annual volume to be imported for disposal to the Compact Facility and certified that the disposal of imported waste will not reduce capacity for Party State-generated waste, based on the currently licensed volume and activity. The Compact Facility will provide the Commission with radionuclide specific radioactivity amounts for the recommended total annual volume proposed to be imported for disposal. The recommendation shall become final after Commission approval. The approval shall be based on timely renewal of the Compact Facility License by the licensee, assigns, or successors. Any operator of a low-level radioactive waste disposal compact facility, as defined in §2.01 of §403.006 of the Texas Health and Safety Code, must in good faith and with commercially reasonable efforts apply for all necessary permits and licenses to maintain the facility in continual operation; and

(3) The Compact Commission bylaws have been finalized and approved.

(d) Agreement Required--No person shall import any low-level radioactive waste for disposal that was generated in a non-Party State unless the Commission has entered into an agreement for the importation of that waste pursuant to this rule. No radioactive waste of international origin shall be imported into the Compact Facility for disposal. Violations of this subsection may result in prohibiting the violator from disposing of low-level radioactive waste in the Compact Facility, or in the imposition of penalty surcharges on shipments to the facility, as determined by the Commission.

(e) Form of Agreement--The form of the Agreement shall be promulgated by the Commission and posted on the Commission's web site, or otherwise made readily accessible to generators and to the public.

(f) Fee for Proposed Importation Agreements.

(1) Import Agreement Application Fee--A non-refundable, application fee of $500 shall accompany the proposed agreement. Payments shall be made by check, money order or electronic funds transfer made payable to the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(2) No action shall be taken on any proposed agreement until the application fees are paid.

(3) Import Agreement Evaluation Fee--Prior to any action on the proposed agreement by the Commission, an additional, non-refundable fee may be assessed based on the estimated time and expenses to be incurred in evaluating and acting on the proposed agreement, if the expense exceeds the application fee. The estimated fee shall be based on a fee schedule as adopted by the Commission. This fee shall be paid by check, money order, or electronic transfer and made payable to the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(4) The fee schedule will be based on the estimated cost of evaluating the proposed agreement and may include, but not be limited to these factors:

(A) the complexity of the proposed agreement (e.g., the number of generators, isotopes, waste streams, waste classifications/activities, waste forms, etc.);

(B) staff expenses;

(C) supplies;

(D) direct and indirect expenses;

(E) purchased services of consultants such as engineers, attorneys or consultants; and

(F) other expenses reasonably related to the evaluation.

(5) This import agreement evaluation fee will be due regardless of whether or not an import agreement is issued and shall be made by check or money order made payable to the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(g) Notice and Timing of Agreement--A person shall file a proposed import agreement with the Commission and receive approval by the Commission prior to the proposed importation date.

(1) The proposed import agreement shall be accompanied by a certification by the Compact Facility that the waste acceptance criteria have been met for the proposed waste importation.

(2) By electronic mail, the petitioner shall deliver to the Compact Facility operator a copy of the import agreement (and any supplements or amendments thereto) at the time of filing with the Commission, and a copy shall also be delivered by Certified mail.

(3) Proposed import agreements received by the Commission during any calendar month may be processed in aggregate at the beginning of the following calendar month. The date of receipt of proposed import agreements shall be deemed the first business day of the following calendar month. Within 15 days of the date of receipt, the Commission shall post the import agreement to the Commission's web site and transmit it to the *Texas Register.*

(4) Any comments by the Compact Facility operator on the import agreement shall be filed in writing with the Commission not later than 30 days after the deemed date of receipt of the proposed import agreement. By electronic mail, the Compact Facility operator shall deliver to the petitioner a copy of all comments (and any supplements or amendments thereto) submitted to the Commission at the time of

filing with the Commission, and a copy shall also be delivered by Certified mail.

(5) Within 15 days of the date of receipt of the Compact Facility operator comments, the Commission shall post the import agreement to the Commission's web site.

(6) Comments on the proposed import application may be submitted by any person, other than the Compact Facility operator, during the 60-day period following the date of posting to the Commission's web site as specified in paragraph (5) of this subsection.

(7) Concurrently with the posting on the web site as specified in paragraph (5) of this subsection, the Commission will distribute the import agreement and comments received from the Compact Facility operator, petitioner, and public to other interested parties by mail or email for information and comment and shall post the import agreement, comments received and other pertinent information on the Commission's web site. The Commission shall distribute the proposed import agreement and any comments received from the Compact Facility or others to the members of the Commission, and distribute comments from others to the Compact Facility operator, the petitioner, and the public.

(h) Review of Proposed Import Agreement--After receiving the proposed import agreement and any comments that have been made thereon, the Commission at a meeting held promptly, but no sooner than 60 days nor later than 365 days, subject to the financial resources of the Commission, after the date the proposed import agreement was filed with the Commission, shall act upon the import agreement utilizing the following factors:

(1) The volume, type, physical form and radionuclide-specific activity of waste proposed for importation;

(2) The policy and purpose of the Compact;

(3) The availability of the Compact Facility for the disposal of the waste proposed to be imported;

(4) The economic impact, including both potential benefits and liabilities, on the Host County, the Host State, and the Compact Facility operator of entering into the import agreement;

(5) Whether the Compact Facility operator has or will obtain, prior to importation, authorization from TCEQ to dispose of the proposed waste;

(6) The effect on the Compact Facility's total annual volume and radionuclide-specific activity recommended for importation;

(7) The existence of unresolved violations pending against the petitioner with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the petitioner has unresolved violations;

(8) Any unresolved violation, complaint, unpaid fee, or past due report that the petitioner has with the Commission;

(9) Any relevant comments received from the Compact Facility operator, compact generators, the person proposing to export the waste, the Host County, the Host State, interested state or federal regulatory agencies, or the public;

(10) The authorization of a person to export (if applicable);

(11) The impacts, if any, on the availability of disposal capacity on the Compact Facility to meet the current and future needs of Compact generators; and

(12) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(i) Decision by the Commission--The Commission may take one of the following actions on the proposed importation agreement, in whole or in part: approve the proposed agreement; deny the proposed agreement; approve the proposed agreement subject to terms and conditions as determined by the Commission; or request additional information needed for a decision. The Commission may deny the petition for:

(1) Lack of current or anticipated capacity beyond that required by party state generators;

(2) Any low level radioactive waste that does not meet the waste acceptance criteria of the license;

(3) International origin of the waste, or its original (i.e. preprocessing) generator; and

(4) Any other relevant issue. Any person who was a proper party to the petition may petition the Commission to reconsider its decision within 20-days of the Commission decision. The Commission decision on the petition to reconsider its decision is final and unappealable.

(j) Terms and Conditions--The Commission may impose any terms or conditions on the import agreement reasonably related to furthering the policy and purpose of the Compact.

(k) Importation Agreement Duration, Amendment, Revocation, Indemnification, Reporting, Assignment and Fees.

(1) An importation agreement shall be issued for the term specified in the agreement and shall remain in effect for that term unless amended, revoked, or canceled by the Commission. A condition of every importation agreement shall be that any petitioner or generator of low-level radioactive waste must agree to comply with Section 8.03 of the Compact.

(2) The Commission may, on its own motion or in response to a petition by the agreement holder for amendment of an importation agreement for which prior written notice has been given to the agreement holder and the Compact Facility operator, revoke the agreement, add or delete requirements or limitations to the agreement. The Commission may provide a reasonable time to allow the agreement holder and the Compact Facility operator to make the changes necessary to comply with any additional requirements imposed by the Commission.

(3) An import agreement is not assignable or transferable to any other person.

(4) The Commission continues to consider the policy issues related to assessment of fees for the importation of low-level radioactive waste based on volume or activity of the waste. Upon conclusion of consideration of this issue, the Commission may provide for such fees in this section.

(l) The Compact Facility operator shall file with the Commission a Quarterly Import Report, no later than 30 days after the end of each calendar quarter, describing the imported waste that was disposed and stored under the import agreement during the quarter by the Compact Facility, including the physical, radiological and chemical properties of the waste consistent with the identification required by the Compact Waste Facility license. Each Quarterly Import Report will provide the identity of the generator, the manifested volume and activity of each imported class of waste (A, B, and C, or in the case of waste imported for management, Greater Than Class C), the state or other place of origin, and the date(s) of waste disposal, if applicable. The Quarterly Report shall provide this information for the imported waste disposed of during the most recent quarter, as well as the cumulative information for imported waste disposed of in prior quarters under this Agreement. The forms of the Quarterly Import Report shall be pre-

scribed by the Commission and shall be posted on the Commission's web site, or may be obtained at a location that will be posted on the Commission's web site.

(m) Agreements to Import--Nothing in this subchapter shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, nor its disposal pursuant to 10 CFR §20.2002.

(n) Form of Import Agreement--The import agreement shall be on a form promulgated by the Commission, posted on the Commission's web site, and shall contain at a minimum the criteria contained in subsection (h) of this section. The form may be amended by the Commission from time to time.

(o) Notwithstanding any other provision of this section, the Commission shall receive but will not begin to process applications for agreements to import waste from a non-compact generator for disposal under this section until such time as the Commission determines by vote taken pursuant to §3.02 of the Compact as compiled at §403.006, Texas Health and Safety Code that it has adequate resources to properly examine applications to enter into agreements prior to entering into such agreements and thereafter to enforce the terms and conditions of such agreements as are entered into.

(p) Definitions--Terms used in this subchapter shall have the meaning ascribed to them in the Compact. Where time requirements are specified in "days," that shall be in calendar days.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 19, 2011.

TRD-201100224
Michael S. Ford
Chair
Texas Low-Level Radioactive Waste Disposal Compact Commission
Effective date: February 8, 2011
Proposal publication date: November 26, 2010
For further information, please call: (806) 410-0226

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.346

The Comptroller of Public Accounts adopts the amendments to §3.346, concerning use tax, without changes to the proposed text as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9639).

Subsection (a) is amended to change the definition of "storage" to incorporate two exclusions formerly found in subsection (c), to change the definition of "use" to reflect the language of Tax Code, §151.011(a), to add to the definition of "use" to the exclusions found in Tax Code, §151.011(c) and (f), and to change the definition of "use tax" to clarify that the tax is imposed on the "storage, use, or other consumption of a taxable item in this state."

Subsection (b) is amended to reorganize for clarity, to reinforce that the term "contractor" refers to "contractor" as defined in §3.291 and to distinguish between use tax liabilities associated with nonresidential repair or remodeling and separated contracts for new construction or residential repair or remodeling and use tax liabilities associated with lump sum contracts for new construction or residential repair or remodeling, to provide examples of "shipments of taxable items from out-of-state suppliers to purchaser's designees," and to add a paragraph regarding the use tax responsibility of a permitted purchaser who makes a purchase under the occasional sale exemption set out in Tax Code, §151.304(b)(1). Paragraph (5) is added to implement a statutory change to Tax Code, §151.011 by House Bill 2425, 78th Legislature, 2003, which provides that the use tax extends to tangible personal property transported into this state that has been processed, fabricated, or manufactured into other property, or has been attached or incorporated into other property. Paragraph (6) implements a decision by the Third Court of Appeals that the exclusion for printed material in §151.011 applies only to printed materials that have been processed, fabricated, or manufactured into other property or attached to or incorporated into other property transported into this state.

Subsection (c) is amended to rename it "Inapplicability of use tax," to substitute §3.338 for §3.340 in accordance with the consolidation of §3.338 and §3.40 and the repeal of §3.340, and to delete exclusions which are replaced in subsection (a).

Subsection (d) is added to replace subsection (c)(4) regarding credit allowed. The section also clarifies that the user of a taxable item from out of state or under a direct pay permit is liable for accrual and remittance of use tax; when payment of the tax is due; and the amount on which the tax is based.

Subsection (e) is added to replace subsection (c)(5) regarding property used outside Texas.

Subsection (f) is added to replace subsection (b)(1)(C) and to provide greater clarity regarding the accrual of use tax for items stored in Texas.

Subsection (g) is added to address the accrual of local use taxes.

The amendments include other nonsubstantive changes for the purpose of clarity.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.101 and §151.011.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2011.

TRD-201100226

Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: February 9, 2011
Proposal publication date: October 29, 2010
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.20

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §217.20, concerning Retired Peace Officer Reactivation, without changes to the proposed text as published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9065) and will not be republished.

The amendment adds language to 37 TAC §217.20, Retired Peace Officer Reactivation.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.316, Reactivation of Peace Officer License.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100261
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: February 24, 2011
Proposal publication date: October 8, 2010
For further information, please call: (512) 936-7713

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CHAPTER 219. PRELICENSING AND REACTIVATION COURSES, TESTS, AND ENDORSEMENTS

37 TAC §219.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §219.1, concerning Eligibility to Take State Examinations, without changes to the proposed text as published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9065) and will not be republished.

The amendment adds language to 37 TAC §219.1, Eligibility to Take State Examinations.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.353, Continuing Education Procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100262
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: February 24, 2011
Proposal publication date: October 8, 2010
For further information, please call: (512) 936-7713

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CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.9

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §221.9, concerning Standardized Field Sobriety Testing (SFST) Proficiency, without changes to the proposed text as published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9066) and will not be republished.

The amendment adds language to 37 TAC §221.9, Standardized Field Sobriety Testing (SFST) Proficiency.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.402, Proficiency Certificates.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100265
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: February 24, 2011
Proposal publication date: October 8, 2010
For further information, please call: (512) 936-7713

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37 TAC §221.13

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §221.13, concerning Emergency Telecommunications Proficiency, without changes to the proposed text as published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9067) and will not be republished.

The amendment adds language to 37 TAC §221.13, Emergency Telecommunications Proficiency.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.405, Telecommunicators.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100264
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: February 24, 2011
Proposal publication date: October 8, 2010
For further information, please call: (512) 936-7713

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37 TAC §221.33

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §221.33, concerning SFST Instructor Proficiency, without changes to the proposed text as published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9068) and will not be republished.

The amendment adds language to 37 TAC §221.33, SFST Instructor Proficiency.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.402, Proficiency Certificates.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100266
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: February 24, 2011
Proposal publication date: October 8, 2010
For further information, please call: (512) 936-7713

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37 TAC §221.37

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts new §221.37, concerning Cybercrime Investigator Proficiency, without changes to the proposed text as published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9069) and will not be republished.

The new section is necessary to provide recognition for investigators specially trained in cybercrimes.

No comments were received regarding adoption of this new section.

The new section is adopted under Texas Occupations Code §1701.402, Proficiency Certificates.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100267
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: February 24, 2011
Proposal publication date: October 8, 2010
For further information, please call: (512) 936-7713

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER H. ADOPTION ASSISTANCE PROGRAM

DIVISION 1. PROGRAM DESCRIPTION AND DEFINITIONS

40 TAC §700.807

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.807, with changes to the proposed text published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10034).

The justification of the amendment is to improve the consistency of implementation of the Enhanced Adoption Assistance program statewide and to help ensure that Enhanced Adoption Assistance is provided only to the children for whom it was intended in legislation - children who would have been expected to remain in foster care through age 18 years unless enhanced adoption assistance benefits are made available. The changes: (1) eliminate discretion to waive extensive adoption recruitment efforts; (2) clarify the types of recruitment efforts that must be attempted

before a child is eligible for enhanced adoption assistance; and (3) clarify that prospective adoptive parents who indicate their willingness to adopt without enhanced adoption assistance will not be eligible for this benefit.

The amendment will function by ensuring that the Enhanced Adoption Assistance program will be used for the children for whom it was intended.

No comments were received regarding adoption of the amendment. DFPS is making grammatical changes to paragraph (4).

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the Family Code, §162.302(g).

§700.807. Who is eligible to receive enhanced adoption assistance?

Enhanced adoption assistance is available to an adoptive or prospective adoptive parent who enters into an initial adoption assistance agreement on or after January 1, 2009, for a child with special needs as described in §700.804 of this title (relating to Who is a child with special needs?), who is in an approved adoptive placement, provided the child also meets each of the following criteria immediately prior to the signing of the adoptive placement agreement:

(1) The child is in the managing conservatorship of DFPS and all parental rights to the child have been terminated for at least 24 months;

(2) The child has an authorized service level of "specialized" or "intense" as defined in Subchapter W of this chapter (relating to Level-of-Care Service System), or, the child had such an authorized service level immediately prior to being placed in a facility or home operated or regulated by another state agency, such as an intermediate care facility for persons with mental retardation and/or related conditions (ICF/MR); a nursing facility, or a community-based waiver services (HCS) residential program;

(3) The child is living in:

(A) a foster care home or other residential child-care operation that is regulated by the DFPS Child Care Licensing Division and is approved under Licensing minimum standards to provide treatment services as defined in §749.61 of this title (relating to What types of services does Licensing regulate?); or

(B) a facility or home operated or regulated by another state agency in this state or in another state that provides comparable treatment services; and

(4) The child has not been adopted despite our having made extensive and ongoing local and national adoption recruitment efforts. These efforts must include considering and following-up with families who initially appear able to meet the child's needs and express an interest in adopting the child, and either pursuing or ruling out adoption by these families; and

(5) The selected prospective adoptive parent is only willing to adopt the child if enhanced adoption assistance is available.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100259
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2011
Proposal publication date: November 12, 2010
For further information, please call: (512) 438-3437

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SUBCHAPTER L. PERMANENCY PLANNING

40 TAC §§700.1201, 700.1202, 700.1204 - 700.1206

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.1201, 700.1202, 700.1204, 700.1205, and 700.1206, without changes to the proposed text published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10035).

The justification of the amendments is to include a requirement of an alternate permanency planning goal not only for children in DFPS's temporary managing conservatorship, but also permanent managing conservatorship, to reflect its continuing commitment to finding and achieving the most appropriate permanency goal for a child in care. In addition, DFPS is clarifying the fact that DFPS may simultaneously be working on more than one permanency planning goal and to bring the subchapter up to date with current practice. Specifically, §700.1201 updates the agency name and adds language reflecting best practice. Section 700.1202 updates the agency name, adds the requirement for alternate permanency planning goals for children in the temporary and permanent managing conservatorship of DFPS, and clarifies that the documentation requirements are for all goals. Section 700.1204 updates the language to be consistent with the alternative permanency placement goals and deletes references to §700.1203 because that section was repealed effective June 1, 2010. Sections 700.1205 and 700.1206 update language to reflect current practices.

The function of enforcing the sections will be that DFPS rules will better facilitate permanency for children in care by including alternate permanency goals for a child that may be pursued concurrently with the child's primary permanency goal.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Texas Family Code, §263.3025 and §263.3026.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100260
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2011
Proposal publication date: November 12, 2010
For further information, please call: (512) 438-3437

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CHAPTER 730. LEGAL SERVICES
SUBCHAPTER Q. CONTRACT APPEALS

40 TAC §§730.1601 - 730.1614

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of Subchapter Q, Contracting Appeals, consisting of §§730.1601 - 730.1614, without changes to the proposed text published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10037).

The justification of the repeal of these rules is they are no longer valid. Texas Government Code, Chapter 2260 preempts these rules.

The function of enforcing the repeals will be that DFPS rules will be in compliance with the statutory provisions of Texas Government Code, Chapter 2260.

No comments were received regarding the adoption of these repeals.

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Texas Government Code, Chapter 2260.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100256
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2011
Proposal publication date: November 12, 2010
For further information, please call: (512) 438-3437

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CHAPTER 732. CONTRACTED SERVICES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§732.288, 732.401, 732.403, 732.407, 732.409, 732.411, 732.413, 732.415, 732.417, 732.421, 732.423, 732.427, 732.429, and 732.431, without changes to the proposed text published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10037).

The justification of the amendments is to: (1) correct differences between DFPS rules and the Texas Government Code, Chapter 2260; and (2) clarify the contract dispute resolution process to more closely follow the Texas Attorney General model rules.

The amendment to §732.401 states that the Texas Government Code, Chapter 2260, takes priority in the event of any conflict between the DFPS rules and the statute.

The amendment to §732.407 makes minor modifications and to avoid potential confusion, expressly names the Commissioner as someone who may receive notice of a claim for breach of contract.

The amendment to §732.409 corrects a conflict between this rule and the Texas Government Code, Chapter 2260, regarding the amount of time that DFPS has to file notice of a counterclaim.

The amendment to §732.413 corrects a conflict between this rule and the Texas Government Code, Chapter 2260, regarding the amount of time that the parties have to begin negotiations.

The amendment to §732.423 clarifies the title of the head of the agency and alters the language to more closely follow the model rules of the Attorney General.

The amendment to §732.427 is amended to more closely follow the model rules of the Attorney General.

Also, minor clarifications are made to §§732.288, 732.403, 732.411, 732.415, 732.417, 732.421, 732.429, and 732.431. The clarifications correct a cross reference and change the word "shall" to "will" or "must," as appropriate.

The function of enforcing the amendments will be compliance with the statutory provisions of the Texas Government Code, Chapter 2260 and greater clarity of the rules.

No comments were received regarding adoption of the amendments.

SUBCHAPTER L. CONTRACT ADMINISTRATION

40 TAC §732.288

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the Texas Government Code, Chapter 2260.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100257
Gerry Williams
General Counsel
Department of Family and Protective Services
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Proposal publication date: November 12, 2010
For further information, please call: (512) 438-3437

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SUBCHAPTER N. DISPUTE RESOLUTION

40 TAC §§732.401, 732.403, 732.407, 732.409, 732.411, 732.413, 732.415, 732.417, 732.421, 732.423, 732.427, 732.429, 732.431

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the Texas Government Code, Chapter 2260.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2011.

TRD-201100258
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2011
Proposal publication date: November 12, 2010
For further information, please call: (512) 438-3437

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 800, relating to General Administration, *without* changes, as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10440):

Subchapter A. General Provisions, §§800.2, 800.3, 800.6, and 800.7

Subchapter B. Allocations, §§800.53, 800.58, 800.65, 800.66, 800.71, and 800.73 - 800.75

Subchapter K. Contract Negotiation, Mediation, and Other Assisted Negotiation or Mediation Processes, §§800.451, 800.454, 800.462, 800.471, and 800.492

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 800, relating to General Administration, *with* changes, as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10440):

Subchapter B. Allocations, §800.77

The Commission adopts the repeal of the following section of Chapter 800, relating to General Administration, *without* changes, as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10440):

Subchapter B. Allocations, §800.67

The Commission adopts the repeal of the following subchapters of Chapter 800, relating to General Administration, in their entirety, *without* changes, as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10440):

Subchapter C. Performance and Contract Management, §800.81 and §800.83

Subchapter D. Incentive Award Rules, §§800.101 - 800.108

Subchapter E. Sanctions, §§800.151, 800.152, 800.161, 800.171, 800.172, 800.174 - 800.176, 800.181, and 800.191 - 800.200

Subchapter H. Agency Monitoring Activities, §§800.301 - 800.309

Subchapter I. Subrecipient and Contract Service Provider Monitoring Activities, §§800.351 - 800.355 and 800.357 - 800.360

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. The Commission has conducted a rule review of Chapter 800, General Administration, and adopts the following amendments:

--Repeal of rules related to the integrity of the Texas workforce system. Certain provisions of the repealed rules will be consolidated into adopted new Chapter 802, which focuses solely on the integrity of the workforce system. Adoption of new Chapter 802 will run concurrently with this rulemaking. The aggregation of these rules in a separate chapter allows Chapter 800 to address only the general administration of the workforce system, resulting in better clarity and consistency.

--Amendment of Subchapter K, rules for negotiation, mediation, and other assisted negotiations of a contract claim, to provide consistency with Texas Government Code, Chapter 2260, which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim.

--Necessary technical changes to simplify and clarify rule language; update terminology and definitions; and remove obsolete provisions.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§800.2. Definitions

Section 800.2(3) adds that "Boards are subrecipients as defined in OMB Circular A-133" to clarify the financial relationship of the Boards to the Agency.

Section 800.2(13) renames the definition of "performance standard" as "performance target" to provide more precise terminology. The paragraph also specifies that "Achievement between 95 and 105 percent of the established target is considered meeting the target."

Section 800.2(14)(G), which specifies the program year for Veterans' Employment and Training, is removed. Texas Labor Code §302.014 transferred the requirement to operate veterans' employment programs from the Commission to the Texas Veterans Commission.

Section 800.2(18) replaces the term "Texas Workforce Center" with "Workforce Solutions Offices," as defined in §801.23(4) of this title, concurrently proposed for amendment.

Section 800.2(19), which defines the Texas Workforce Investment Council (TWIC), removes the reference to the Texas Council on Workforce and Economic Competitiveness (TCWEC). Texas Government Code §2308.002 renamed TCWEC as TWIC.

Section 800.2(21), which defines Veterans' Employment and Training, is removed. Texas Labor Code §302.014 transferred the requirement to operate veterans' employment programs from the Commission to the Texas Veterans Commission.

Section 800.2(22), formerly §800.2(20), replaces the term "Texas Workforce Center" with "Workforce Solutions Offices," as defined in new §801.23(4) of this title, concurrently proposed for amendment.

Certain paragraphs and subparagraphs in this section have been renumbered and relettered to reflect additions or deletions.

§800.3. Historically Underutilized Businesses

Section 800.3(a) replaces the reference to 1 Texas Administrative Code (TAC) Chapter 111 (relating to Executive Administration Division) with 34 TAC Part 1, Chapter 20, Subchapter B (relating to Historically Underutilized Business Program).

§800.6. Charges for Copies of Public Records

Section 800.6(a), General Procedure, adds the phrase "for public information requests under Texas Government Code, Chapter 552." The change clarifies that the Agency will use the Office of the Attorney General's (OAG) guidelines in 1 TAC, Part 3, Chapter 70 to assess charges for providing public information under the Public Information Act (Texas Government Code, Chapter 552). In contrast, charges for unemployment compensation information, which is not public information, are determined based on provisions set out in 40 TAC §815.168.

Section 800.6(b) sets forth the two methods of submitting written requests for public information to the Agency. Under Texas Government Code §552.301(c), the Agency can designate electronic mail addresses and fax numbers to which requests for public information can be directed. The rule informs the public that an e-mail address and fax number for the officer of public information are available on the Agency's Web site.

Section 800.6(c), Standard Fees, removes the reference to the method of calculation being the "average cost" of handling certain repetitive requests. The method of calculating standard fees is consistent with OAG's charge rules and based on generally accepted accounting principles that may include, but are not limited to, "average cost." The subsection also replaces the phrase "certain types of repetitive requests" with "common categories of requests that the Commission frequently receives" to better describe the types of requests for which the Commission may establish a standard fee.

Section 800.6(e), Program-Related Requests, is renamed as "Unemployment Insurance-Related Requests" to clarify that the subsection applies only to requests regarding unemployment insurance (UI). Additionally, the subsection clarifies that UI-related requests:

--are exempt from Texas Government Code, Chapter 552; and

--for purposes other than the administration of the Texas Unemployment Compensation Act shall be assessed a fee.

Section 800.6(f), De Minimis Requests, removes language that may result in confusion when read together with OAG's language relating to charges for copies of public information.

New §800.6(f), formerly §800.6(g), replaces the reference to 20 Code of Federal Regulations (C.F.R.) §603 with 20 C.F.R. §603.1 as the more accurate citation. The previous reference to 20 C.F.R. §603 was limited to unemployment compensation information. The added language also makes the subsection applicable to any information that may be the subject of a governmental request rather than public information requested under the Public Information Act.

New §800.6(g), Certified Records, formerly §800.6(h), changes the rate for certification for certified records from $5.00 to 15.00 to better reflect the cost of creating certified records.

Certain subsections in this section have been relettered to reflect additions or deletions.

§800.7. Agency Vehicles

Section 800.7(a), Purpose and Intent, replaces the references to:

--Texas Building and Procurement Commission with Texas Comptroller of Public Accounts. Texas Government Code §2151.004(d) transferred certain duties and powers of the Texas Building and Procurement Commission, including the State

Vehicle Fleet Management Plan, to the Comptroller of Public Accounts; and

--Texas Building and Procurement Commission's Web site with Comptroller's Web site.

Section 800.7(b)(3) replaces the reference to Texas Building and Procurement Commission with Comptroller of Public Accounts.

SUBCHAPTER B. ALLOCATIONS

The Commission adopts the following amendments to Subchapter B:

§800.53. Choices

Section 800.53(b)(1) adds the term "unduplicated" to the total number of families with Choices work requirements to avoid double-counting certain individuals and to more accurately describe the allocation procedure.

§800.58. Child Care

Section 800.58(e), relating to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) child care, is removed. In 2005, SNAP E&T child care was integrated into the subsidized child care program, which uses Child Care and Development Fund funds for SNAP E&T participants.

Certain subsections in this section have been relettered to reflect additions or deletions.

§800.65. Project Reintegration of Offenders

Section 800.65 replaces the title, "Project Reintegration of Offenders (RIO)" with "Project Reintegration of Offenders."

Section 800.65(b)(1) adds the term "unduplicated" to the total number of parolees residing within the local workforce development area (workforce area) to avoid double-counting certain individuals and to more accurately describe the allocation procedure.

§800.66. Trade Act Services

Section 800.66(a) sets forth how the Commission shall distribute available Trade Act services funds to workforce areas to more accurately reflect where Trade-certified workers are located and may be in need of training based on recent data. The Trade and Globalization Adjustment Assistance Act of 2009 greatly expanded the potential number of trade-affected workers by allowing service workers to be certified. Previously, only manufacturing workers could be certified as trade-affected. This change, among others, increased the number of trade-affected workers in Texas and affected their location in the state.

Section 800.66(b) is removed.

New §800.66(b) adds that the Commission shall approve an initial distribution for each workforce area annually, and the factors to be considered for distribution of additional funds. The subsection specifies that the factors to be considered may include:

--number of individuals in Trade Adjustment Assistance (TAA)-approved training;

--number of Trade-certified layoffs in the workforce area;

--number of employees from Trade-certified companies;

--layoffs identified through the Worker Adjustment and Retraining Notification Act process in the workforce area;

--demonstrated need;

--the cost of training; and

--other factors as determined by the Commission.

New §800.66(c) adds that the Agency will periodically review the expenditure of training and administrative funds relative to workforce areas' distributions. The Agency will make distributions of additional funds to workforce areas based on the periodic reviews and Board requests, consistent with the factors approved by the Commission.

New §800.66(d) adds that if TAA funds are not sufficient to meet funding needs for the remainder of a year, short-term needs will be estimated for workforce areas; recommendations for deobligation and redistribution will be made to the Commission; and requests for additional funds from the U.S. Department of Labor (DOL) will be made if appropriate.

New §800.66(e), formerly §800.66(c), replaces the phrase "an amount not to exceed 10%" with "no more than 15 percent" to clarify the percent of the funds expended for Trade Act training, services, and other program activities that shall be used for administrative costs under the Trade Adjustment Assistance Reform Act of 2002, P.L. 107-210, §235A. The section also adds that the Commission shall establish policy limitations for the expenditure of administrative funds at the state and Board levels. On April 2, 2010, DOL adopted new rules regarding the use of TAA administrative funds for merit staffing for the provision of certain TAA services and the allocation methodology to the states. The new merit staff regulatory requirement states that any TAA-funded case management services must be provided by state merit staff as of December 15, 2010.

Certain subsections have been relettered to accommodate deletions.

§800.67. Veterans' Employment and Training

Section 800.67 is repealed. Texas Labor Code §302.014 transferred the requirement to operate veterans' employment programs from the Commission to the Texas Veterans Commission.

§800.71. General Deobligation and Reallocation Provisions

Section 800.71(b)(6) is removed. Funds for Trade Act services are distributed to workforce areas as set forth in §800.66 of this chapter.

Section 800.71(b)(7) is removed. Workforce Investment Act (WIA) formula funds are no longer subject to deobligation because DOL did not renew the waiver.

§800.73. Child Care Match Requirements and Deobligation

New §800.73(a)(3) states that the Commission, after the end of the twelfth month, can withhold incomplete federal matching amounts associated with local match. Boards that fail to produce local match on the Commission-approved schedule pose a risk because they expend federal funds.

§800.74. Midyear Deobligation of Funds

Section 800.74(a) and §800.74(a)(3) delete the reference to subsection (c) of this section because subsection (c) has been removed.

Section 800.74(c) is removed. WIA formula funds are no longer subject to midyear deobligations because DOL did not renew the waiver.

Certain subsections in this section have been relettered to accommodate additions or deletions.

§800.75. Second-Year WIA Deobligation of Funds

Section 800.75(a) replaces the term "unexpended" with "unobligated balance of" to more precisely reflect government accounting terminology.

Section 800.75(b) replaces the term "unexpended" with "unobligated" to provide more precise terminology.

§800.77. Reallocation of Funds

Section 800.77(a)(6) is removed. Funds for Trade Act services are distributed to workforce areas as set forth in §800.66 of this chapter.

Section 800.77(a)(7) is removed. WIA formula funds are no longer subject to midyear deobligations because DOL did not renew the waiver.

Certain paragraphs have been renumbered to accommodate deletions.

Comment: On November 17, 2010, DOL approved the Commission's request to waive the WIA statutory reallocation guidelines. The waiver permits the Commission, at its discretion, to consider additional factors in determining a workforce area's eligibility for reallocation of recaptured funds.

Response: The Commission, as a result of DOL's waiver approval, finds that the removal of §800.77(a)(7) regarding WIA formula funds is no longer necessary and reinserts "WIA Formula Funds" as §800.77(a)(6).

SUBCHAPTER C. PERFORMANCE AND CONTRACT MANAGEMENT

The Commission adopts the repeal of Subchapter C in its entirety:

§800.81. Performance

§800.83. Performance Review and Assistance

These sections have been incorporated into new Chapter 802, a separate, but concurrent, rulemaking adoption that groups together common rules that address the integrity of the workforce system.

SUBCHAPTER D. INCENTIVE AWARD RULES

The Commission adopts the repeal of Subchapter D in its entirety:

§800.101. Scope and Purpose

§800.102. Definitions

§800.103. Types of Awards

§800.104. Data Collection

§800.105. Board Classification

§800.106. Performance Awards

§800.107. Workforce Investment Act Local Incentive Awards

§800.108. Job Placement Incentive Awards

The contents of Subchapter D are incorporated in new Chapter 802, a separate, but concurrent, rulemaking adoption that groups together common rules that address the integrity of the workforce system.

SUBCHAPTER E. SANCTIONS

The Commission adopts the repeal of Subchapter E in its entirety:

§800.151. Scope and Purpose

§800.152. Definitions

§800.161. Intent to Sanction

§800.171. Sanctionable Acts

§800.172. Sanction Status

§800.174. Corrective Actions and Penalties

§800.175. Corrective Actions and Penalties Under the Workforce Investment Act (WIA)

§800.176. Informal Conferences and Informal Dispositions

§800.181. Sanction Determination

§800.191. Appeal

§800.192. Hearing Procedures

§800.193. Postponements, Continuances, and Withdrawals

§800.194. Evidence

§800.195. Hearing Officer Independence and Impartiality

§800.196. Ex Parte Communications

§800.197. Hearing Decision

§800.198. Motion for Reopening

§800.199. Motion for Rehearing

§800.200. Finality of Decision

The contents of Subchapter E are incorporated in new Chapter 802, a separate, but concurrent, rulemaking adoption that groups together common rules that address the integrity of the workforce system.

SUBCHAPTER H. AGENCY MONITORING ACTIVITIES

The Commission adopts the repeal of Subchapter H in its entirety:

§800.301. Purpose

§800.302. Definitions

§800.303. Program and Fiscal Monitoring

§800.304. Program Monitoring Activities

§800.305. Fiscal Monitoring Activities

§800.306. Agency Monitoring Reports

§800.307. Resolution

§800.308. Agency Access to Records

§800.309. Commission Evaluation of Board Oversight Capacity

The contents of Subchapter H are incorporated in new Chapter 802, a separate, but concurrent, rulemaking that groups together common rules that address the integrity of the workforce system.

SUBCHAPTER I. SUBRECIPIENT AND CONTRACT SERVICE PROVIDER MONITORING ACTIVITIES

The Commission adopts the repeal of Subchapter I in its entirety:

§800.351. Scope and Purpose

§800.352. Definitions

§800.353. Subrecipient and Contract Service Provider Monitoring

§800.354. Risk Assessment

§800.355. Monitoring Plan

§800.357. Controls Over Monitoring

§800.358. Reporting and Resolution Requirements

§800.359. Independent Audit Requirements

§800.360. Access to Records

The contents of Subchapter I are incorporated in new Chapter 802, a separate, but concurrent, rulemaking that groups together common rules that address the integrity of the workforce system.

SUBCHAPTER K. CONTRACT NEGOTIATION, MEDIATION, AND OTHER ASSISTED NEGOTIATION OR MEDIATION PROCESSES

The Commission adopts the following amendments to Subchapter K:

§800.451. Purpose and Applicability

Section 800.451(a), Purpose, removes the sentence "The Commission recognizes that the model rules of the Office of the Attorney General are voluntary guidelines that are not binding on the Commission" because the model rules apply only where a unit of state government either lacks rulemaking authority or chooses to voluntarily adopt OAG rules. Texas Government Code §2260.052(c) requires each unit of state government to adopt rules to govern the negotiation and mediation of a claim, which this rule accomplishes for the Agency.

Section 800.451(b)(3)(H) is removed. Contracts funded solely by federal grant monies are excluded from the negotiations, mediation, and other assisted negotiation or mediation processes regarding a claim of breach of contract asserted by a contractor against the Agency under Texas Government Code, Chapter 2260.

§800.454. Agency Counterclaim

Section 800.454(c) amends the number of days in which the notice of counterclaim must be delivered to the contractor from 90 to 60, after the Agency's receipt of the contractor's notice of claim, to align with the requirements of Texas Government Code §2260.051(d).

§800.462. Negotiation Timetable

Section 800.462(b)(1) - (3) currently requires negotiations to commence 60 days following the later of:

(1) the date of termination of the contract;

(2) the completion date, or substantial completion date in the case of construction projects, in the original contract; or

(3) the date the Agency receives the contractor's notice of claim.

Paragraphs (1) - (3) are removed because they are inconsistent with Texas Government Code §2260.052, which requires that negotiations "must begin not later than the 120th day after the date the claim is received."

Section 800.462(b) aligns with Texas Government Code §2260.052 and requires that negotiations begin no later than the 120th day after the date the claim is received.

Section 800.462(c)(1) - (2) currently states that the Agency may delay negotiations until after the 180th day after the event resulting in the breach of contract claim by:

(1) delivering written notice to the contractor of the delay of negotiations; and

(2) delivering written notice to the contractor of when the negotiations will begin.

Paragraphs (1) and (2) are removed because they are inconsistent with Texas Government Code §2260.051(b).

Section 800.462(c) allows the Agency to delay negotiations, with written agreement of the parties, until after the 120th day after the date of the event giving rise to the claim of breach of contract. This change aligns with Texas Government Code §2260.051(b).

Section 800.462(d) removes the references to §800.462(b) and (c) and states that parties can conduct negotiations on an agreed-upon schedule as long as the negotiations adhere to the time frame set forth in §800.462(b).

§800.471. Mediation

Section 800.471(a), Option to Mediate, modifies the amount of time in which parties may agree to mediate a dispute from the 270th day to the 120th day or before the agreed written extension of both parties to align with Texas Government Code §2260.056(a).

§800.492. Request for Contested Case Hearing

Section 800.492(c) replaces thirty days with 10 business days as the period in which the Agency, after receipt of the contractor's request for a contested case hearing, must forward the request to the State Office of Administrative Hearings. This change aligns with Texas Government Code §2260.102, Request for Hearing.

COMMENTS WERE RECEIVED FROM:

The U.S. Department of Labor

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§800.2, 800.3, 800.6, 800.7

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
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SUBCHAPTER B. ALLOCATIONS

40 TAC §§800.53, 800.58, 800.65, 800.66, 800.71, 800.73 - 800.75, 800.77

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.77. Reallocation of Funds.

(a) Reallocation. A workforce area may be eligible for reallocation of the following funds allocated by the Commission:

(1) Child care (including unmatched federal child care funds that are contingent upon a workforce area securing local funds)

(2) Choices

(3) Employment Service

(4) SNAP E&T

(5) Project RIO

(6) WIA Formula Funds

(7) WIA Alternative Funding for Statewide Activities

(8) WIA Alternative Funding for One-Stop Enhancements

(b) Eligibility.

(1) For a workforce area to be eligible for a reallocation of child care funds (excluding unmatched federal funds that are contingent upon a workforce area securing local funds), and the funds set forth in subsection (a)(2) - (8) of this section, the Commission may consider whether a workforce area:

(A) has met targeted expenditure levels as required by §800.74(a) of this subchapter, as applicable, for that period;

(B) has not expended or obligated more than 100 percent of the workforce area's allocation for the category of funding;

(C) has demonstrated that expenditures conform to cost category limits for funding;

(D) has demonstrated the need for and ability to use additional funds;

(E) has an established plan for working with at least one of the Governor's industry clusters, as specified in the local Board plan;

(F) is current on expenditure reporting;

(G) is current with all single audit requirements; and

(H) is not under sanction.

(2) For a workforce area to be eligible for a reallocation of unmatched federal child care funds that are contingent upon a workforce area securing local funds, the Commission may consider:

(A) whether a workforce area has met the level for securing and completing local match requirements set out in §800.73(a) of this subchapter; and

(B) the applicable factors listed in paragraph (1) of this subsection, including factors in paragraph (1)(B) - (H) of this subsection.

(c) The Commission may reallocate funds to an eligible workforce area based on the applicable method of allocation, as set forth in this subchapter, and may modify the amount to be reallocated by considering the following:

(1) the amount specified in a workforce area's written request for additional funds;

(2) the amount available for reallocation versus the total dollar amount of requests;

(3) the demonstrated ability of a workforce area to effectively expend funds to address the need for services in the workforce area;

(4) the extent to which the project supports activities related to the Governor's industry clusters;

(5) the workforce area's performance during the current and prior program year; and

(6) related factors, as necessary, to ensure that funds are fully used.

(d) To the extent this section is found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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40 TAC §800.67

The rule is repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. PERFORMANCE AND CONTRACT MANAGEMENT

40 TAC §800.81, §800.83

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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SUBCHAPTER D. INCENTIVE AWARD RULES

40 TAC §§800.101 - 800.108

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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SUBCHAPTER E. SANCTIONS

40 TAC §§800.151, 800.152, 800.161, 800.171, 800.172, 800.174 - 800.176, 800.181, 800.191 - 800.200

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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SUBCHAPTER H. AGENCY MONITORING ACTIVITIES

40 TAC §§800.301 - 800.309

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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SUBCHAPTER I. SUBRECIPIENT AND CONTRACT SERVICE PROVIDER MONITORING ACTIVITIES

40 TAC §§800.351 - 800.355, 800.357 - 800.360

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. CONTRACT NEGOTIATION, MEDIATION, AND OTHER ASSISTED NEGOTIATION OR MEDIATION PROCESSES

40 TAC §§800.451, 800.454, 800.462, 800.471, 800.492

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

The Texas Workforce Commission (Commission) adopts the following new sections to Chapter 801, relating to Local Workforce Development Boards, *without* changes, as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10454):

Subchapter B. One-Stop Service Delivery Network, §§801.24, 801.25, and 801.31

The Commission adopts amendments to the following sections of Chapter 801, relating to Local Workforce Development Boards, *without* changes, as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10454):

Subchapter A. General Provisions, §801.1 and §801.16

Subchapter B. One-Stop Service Delivery Network, §§801.21 - 801.23, 801.27, and 801.28

The Commission adopts the repeal of the following sections of Chapter 801, relating to Local Workforce Development Boards, *without* changes, as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10454):

Subchapter A. General Provisions, §801.2 and §801.13

Subchapter B. One-Stop Service Delivery Network, §§801.24, 801.25, and 801.31

The Commission adopts the repeal of the following subchapter of Chapter 801, relating to Local Workforce Development Boards, in its entirety, *without* changes, as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10454):

Subchapter C. The Integrity of the Texas Workforce System, §§801.51 - 801.56

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. The Commission has conducted a rule review of Chapter 801, Local Workforce Development Boards (Boards), and adopts the following:

--Repeal of rules related to the integrity of the Texas workforce system. Certain provisions of the repealed rules will be consolidated into adopted new Chapter 802, which focuses solely on the integrity of the workforce system. Adoption of new Chapter 802 will run concurrently with this rulemaking. The aggregation of these rules in a separate chapter allows Chapter 801 to address only Boards, resulting in better clarity and consistency.

--Amendment of Subchapter B, relating to the One-Stop Service Delivery Network, by:

--defining Texas Workforce Centers and Workforce Solutions Centers;

--classifying all workforce offices as Workforce Solutions Offices;

--establishing only one certification level for all Workforce Solutions Offices providing workforce services; and

--transferring responsibility for certifying Workforce Solutions Offices from the Commission to the Boards.

--Necessary technical changes to simplify and clarify rule language, update terminology and definitions, and remove obsolete provisions.

Currently, Commission rules outline policy relating to requirements for Texas Workforce Center certification/standards, which establish the following center certification levels:

--Basic Texas Workforce Center

--Certified Texas Workforce Center

--Full-Service Texas Workforce Center

--Certified Full-Service Texas Workforce Center

At a minimum, Texas Workforce Centers must meet the basic standards. If Texas Workforce Centers exceed the basic standards and meet additional Commission-established standards, they are considered full-service. Further, if a Board requests that the Commission conduct a certification review of a particular Texas Workforce Center, the center is deemed a Certified Texas Workforce Center. All local workforce development areas (workforce areas) must have at least one Certified Full-Service Texas Workforce Center.

These certification standards were developed in 1996, pursuant to Texas Labor Code §301.001, which created the Texas Workforce Commission. The statute established the requirement for Texas Workforce Centers, and established the required and optional workforce partners. Subsequently, Congress authorized the Workforce Investment Act (WIA), which contained several grandfather provisions allowing Texas to continue using its previously adopted workforce structure.

As the Commission implemented House Bill 1863 in 1996, it elected to take on the responsibility of ensuring that newly formed Boards complied with the provisions of the statute, including the provisions now contained in Texas Government Code §2308.312 regarding the establishment of Texas Workforce Centers. To ensure that uniform minimum standards were met statewide in this nascent system, the Commission established in rule that it was the entity responsible for certifying Boards' compliance with the rules regarding services available at Texas Workforce Centers.

With the maturation of the Texas workforce system, Boards now have a clear understanding of the necessary standards for Texas Workforce Centers, and Boards use a variety of methods to deliver a wide range of services. Thus, the requirement for Commission review and certification is no longer necessary and, in fact, may inadvertently impede Boards' development of innovative and streamlined service delivery methods. The Commission believes that transferring these responsibilities to the Boards will allow Boards to develop innovative and streamlined service delivery methods.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§801.1. Requirements for Formation of Local Workforce Development Boards

Section 801.1(b), State Law, replaces the reference to the "Workforce and Economic Competitiveness Act" with "Workforce Investment Act" to align with Texas Government Code, Chapter 2308. Senate Bill 281, 78th Texas Legislature, Regular Session (2003), amended Chapter 2308, and replaced all references to the Workforce and Economic Competiveness Act with Workforce Investment Act.

Section 801.1(e), Time of Application, replaces the reference to Workforce Economic Competitiveness Act with Workforce Investment Act to align with the Texas Government Code, Chapter 2308.

Section 801.1(g)(2)(A)(ii)(II) replaces the term "Texas Workforce Center" with "Workforce Solutions Office," as defined in §801.23(4).

§801.2. Waivers

Section 801.2 is repealed. The information in this section has been incorporated into new Chapter 802, a separate, but concurrent, rulemaking adoption that groups together common rules that address the integrity of the workforce system.

§801.13. Board Member Conflicts of Interest

Section 801.13 is repealed. The information in this section has been incorporated into new Chapter 802, a separate, but concurrent, rulemaking adoption that groups together common rules that address the integrity of the workforce system.

§801.16. Partnership Agreement

Section 801.16 replaces the title "Agreement for Local Procedures" with "Partnership Agreement" to align with terminology in Texas Government Code §2308.253(g).

Section 801.16(a) - (c) replaces the reference to "Agreement for Local Procedures" with "Partnership Agreement" to align with terminology in Texas Government Code §2308.253(g).

Section 801.16(d)(1) - (2) replaces the reference to "Agreement for Local Procedures" with "Partnership Agreement" to align with terminology in Texas Government Code §2308.253(g).

Section 801.16(e) replaces the reference to "Agreement for Local Procedures" with "Partnership Agreement" to align with terminology in Texas Government Code §2308.253(g).

SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

The Commission adopts the following amendments to Subchapter B:

§801.21. Scope and Purpose

Section 801.21(b) replaces the references to §801.2 and §801.54. Both sections are repealed and incorporated into new Chapter 802, a separate, but concurrent, rulemaking adoption that groups together common rules that address the integrity of the workforce system. References to new §802.21 (relating to

Board Contracting Guidelines) and §802.44 (relating to Service Delivery Waiver Requests), respectively, are added.

Section 801.21(b) also corrects the reference to Texas Government Code, Chapter 2803, with Texas Government Code, Chapter 2308.

§801.22. Requirement to Maintain a One-Stop Service Delivery Network

Section 801.22 replaces the term "Certified Full-Service Texas Workforce Center" with "Workforce Solutions Office," as defined in §801.23(4) of this chapter, to reflect the removal of §801.23(1), the definition of "Certified Full-Service Texas Workforce Center." All workforce offices are classified as Workforce Solutions Offices under new §801.24(a), and new §801.24(b) establishes only one certification level for Workforce Solutions Offices.

§801.23. Definitions

Section 801.23(1), the definition of Certified Full-Service Texas Workforce Center, is removed. New §801.24(a) classifies all workforce offices as Workforce Solutions Offices, and new §801.25 establishes only one certification level for Workforce Solutions Offices; therefore, this definition is obsolete.

Section 801.23(2), the definition of Certified Texas Workforce Center, is removed. New §801.24(a) classifies all workforce offices as Workforce Solutions Offices, and new §801.24(b) establishes only one certification level for Workforce Solutions Offices; therefore, this definition is obsolete.

Section 801.23(3), the definition of competent, is removed. Texas Labor Code §302.151 defines veterans for the purposes of receiving job training and employment priority, and competency is not a criterion.

New §801.23(4) defines Workforce Solutions Office as a local Workforce Solutions Office that provides one or more services, as set out in §801.25 of this subchapter, to aid employers and job seekers.

Certain paragraphs in this section have been renumbered to accommodate additions or deletions.

§801.24. Texas Workforce Center Certification Levels

Section 801.24 is repealed and adopted as new.

§801.24. Workforce Solutions Office Certification

New §801.24 addresses the certification process for Workforce Solutions Offices. Since 1996, the Commission has reviewed and certified Workforce Solutions Offices. In that time, the Texas workforce system has matured and Boards clearly understand the certification standards. The Commission will maintain its oversight responsibility for the certification of Workforce Solutions Offices.

New §801.24(a) classifies all workforce offices that provide workforce services as Workforce Solutions Offices.

New §801.24(b) requires that Boards ensure that at least one Workforce Solutions Office in the workforce area provides on-site access to all services set forth in §801.25.

New §801.24(c), Certified Workforce Solutions Offices, requires Boards, as directed by the Commission, to provide certification to the Commission for every Workforce Solutions Office that provides on-site access to all services set forth in §801.25.

New §801.24(d), Other Workforce Solutions Offices, requires Boards, as directed by the Commission, to notify the Commission of all on-site services available at any Workforce Solutions Office that does not provide on-site access to all services set forth in §801.25.

New §801.24(e) requires Boards to notify the Commission, when a change occurs, of the requirements set forth in subsections (c) and (d) of this section.

New §801.24(f) states that the Commission shall verify compliance with subsections (b) - (d) of this section through:

(1) issuance of Agency guidance;

(2) assurances set forth in Agency-Board agreements;

(3) annual monitoring reviews; and

(4) other means as identified by the Agency.

§801.25. Texas Workforce Center Standards

Section 801.25 is repealed and adopted as new.

§801.25. Minimum Standards for Certified Workforce Solutions Offices

New §801.25 delineates the standards that Boards shall ensure Workforce Solutions Offices meet.

New §801.25(a) requires Boards to ensure that each Workforce Solutions Office:

(1) provides basic labor exchange services;

(2) provides services set forth in §801.28(a);

(3) provides access to information and services available in the workforce area; and

(4) addresses the individual needs of employers and job seekers.

New §801.25(b) requires Boards to ensure that the services provided by each Workforce Solutions Office, as set forth in Texas Government Code, Chapter 2308, include:

(1) labor market information, including available job openings and education and training opportunities;

(2) uniform eligibility requirements and application procedures for all workforce training and services;

(3) unemployment insurance (UI) assistance;

(4) independent assessment of individual needs and the development of an employment plan;

(5) centralized and continuous case management and counseling;

(6) individual referral for services, including basic education, classroom skills training, on-the-job training, and customized training;

(7) support services, including child care assistance, student loans, and other forms of financial assistance required to participate in and complete training; and

(8) job training and employment assistance for persons formerly sentenced to the Texas Department of Criminal Justice's institutional division or state jail division, provided in cooperation with Project Reintegration of Offenders.

New §801.25(c) requires Boards to ensure that each Workforce Solutions Office complies with the following Commission-established standards:

(1) provides customer access to WorkInTexas.com; résumé preparation tools, including software; and Internet access;

(2) ensures eligible foster youth are given access to workforce services to help meet their employment, education, and training needs to transition to independent living, as set forth in Texas Family Code §264.121;

(3) provides each customer with information on local high-growth, high-demand occupations and industries, projected wage level upon completion of training programs, and performance of training providers when requested;

(4) ensures that Workforce Solutions Offices' staff is trained and knowledgeable in order to provide services to employers and job seekers;

(5) demonstrates on-site management of all personnel, a plan for cross-training staff in all services, minimal programmatic specialization of staff, removal of redundancies within program activities, and maximum flexibility to optimize use of resources;

(6) designs a customer-friendly waiting area and implements written procedures that define the steps taken to minimize customer wait time in the reception area and in other areas of Workforce Solutions Offices; and

(7) provides consumer information on the quality of education and training providers and includes a mechanism for customer feedback on personal experience with such providers.

New §801.25(d) requires Boards to ensure that Workforce Solutions Offices that do not provide all on-site services and programs specified in subsections (b) and (c) of this section, provide electronic access to such services and programs.

New §801.25(e) requires Boards to ensure that only Workforce Solutions Office partners provide developmental services.

§801.27. Workforce Solutions Office Partners

Section 801.27 replaces the title "Texas Workforce Center Partners" with "Workforce Solutions Office Partners," as defined in §800.2(22) of this title, concurrently adopted for amendment.

Section 801.27(b):

--replaces the term "Texas Workforce Center" with "Workforce Solutions Offices," as defined in §801.23(4) of this chapter; and

--removes the following from the list of required partners because they are not considered partners: WIA adults, dislocated workers, and youth; FSE&T TANF Choices; subsidized child care; Wagner-Peyser ES; TAA, Project RIO; and UI.

§801.28. Services Available through the One-Stop Service Delivery Network

Section 801.28(a) replaces the term "Certified Texas Workforce Centers" with "Workforce Solutions Offices." All workforce offices are classified as Workforce Solutions Offices under new §801.24(a), and new §801.25 establishes only one certification level for Workforce Solutions Offices.

Section 801.28(a)(11) changes the term "FSE&T" to "SNAP E&T" to align with federal and state name changes.

Section 801.28(b)(2) replaces the term "Individual Employment Plan" with "employment plan" to create a general term that applies to all Commission-administered employment and training programs.

Section 801.28(b)(6) replaces the term "prevocational" with "work readiness," a more current and descriptive term.

§801.31. Priority for Workforce Services

Section 801.31 is repealed and adopted as new.

§801.31. Priority for Workforce Services

New §801.31 sets forth priority of workforce services for eligible veterans and eligible foster youth, and outlines the order in which workforce services are to be applied. In particular, this section specifies that while Boards must identify eligible veterans at initial point of entry, it is not required for foster youth. Services for foster youth must be prioritized and targeted to meet the needs of eligible foster youth.

New §801.31(a)(1) - (3) requires Boards to ensure that eligible veterans, as defined in §801.23(2), are identified at the initial point of entry into the workforce system and informed of the following:

(1) Their right to priority of service;

(2) The full array of employment, training, and placement services available under priority of service; and

(3) Any applicable eligibility requirements for those programs and services.

New §801.31(b) requires Boards to ensure that eligible foster youth, as defined in §801.23(1) of this subchapter; are informed of:

(1) their right to priority of service;

(2) the full array of employment, training, and placement services available under priority of service; and

(3) any applicable eligibility requirements for those programs and services.

New §801.31(c)(1) - (3) sets forth the priority order that Boards must apply:

(1) Eligible veterans receive priority over all other equally qualified individuals in the receipt of services funded in whole or in part by the U.S. Department of Labor (DOL), in accordance with 38 U.S.C. §4215--except state qualified spouses who meet the criterion in §801.23(2)(C)(ii) of this subchapter.

(2) Eligible veterans receive priority over all other equally qualified individuals in the receipt of services funded in whole or in part by state funds in accordance with Texas Labor Code §302.152.

(3) Eligible foster youth receive priority over all other equally qualified individuals--except eligible veterans as defined in this subchapter--in the receipt of federal or state-funded services in accordance with Texas Family Code §264.121(3).

SUBCHAPTER C. THE INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

The Commission adopts the repeal of Subchapter C in its entirety:

§801.51. Purpose and General Provisions

§801.52. Definitions

§801.53. Prohibition against Directly Delivering Services

§801.54. Board Contracting Guidelines

§801.55. Employment of Former Board Employees by Workforce Service Contractors

§801.56. Enforcement

These sections have been incorporated into new Chapter 802, a separate, but concurrent, rulemaking adoption that groups together common rules that address the integrity of the workforce system.

No comments were received.

The Commission hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Commission's legal authority to adopt.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §801.1, §801.16

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2011.

TRD-201100190
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 7, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 475-0829

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40 TAC §801.2, §801.13

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeals affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Workforce Commission
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SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

40 TAC §§801.21 - 801.25, 801.27, 801.28, 801.31

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 475-0829

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40 TAC §§801.24, 801.25, 801.31

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeals affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. THE INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

40 TAC §§801.51 - 801.56

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeals affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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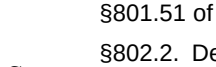

CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

The Texas Workforce Commission (Commission) adopts new Chapter 802, relating to Integrity of the Texas Workforce System, comprising the following subchapters, *without* changes, as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10465):

Subchapter A. Purpose and General Provisions, §802.1 and §802.2

Subchapter B. Contracting, §802.21

Subchapter C. Local Workforce Development Board Restrictions, §§802.41 - 802.44

Subchapter D. Agency Monitoring Activities, §§802.61 - 802.67

Subchapter E. Board and Workforce Service Provider Monitoring Activities, §§802.81 - 802.87

Subchapter F. Performance and Accountability, §§802.101 - 802.104

Subchapter G. Corrective Actions, §§802.121 - 802.125

Subchapter H. Remedies, §§802.141 - 802.152

Subchapter I. Incentive Awards, §§802.161 - 802.168

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. In its review of Chapter 800, General Administration, and Chapter 801, Local Workforce Development Boards, the Commission found that both chapters contained rules governing the integrity of the workforce system.

The Commission has determined the need for a new chapter specifically addressing the integrity of the workforce system. Therefore, the Commission adopts new Chapter 802, Integrity of the Texas Workforce System, which includes new rules and retains certain provisions from the Chapter 800 and Chapter 801 rules.

Additionally, to ensure a seamless transition of rules, the Chapter 800 and Chapter 801 amendments are adopted concurrently with this rulemaking.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. PURPOSE AND GENERAL PROVISIONS

The Commission adopts new Subchapter A, Purpose and General Provisions, as follows:

New Subchapter A contains the general provisions of the Integrity of the Texas Workforce System rules, specifically, purpose and general provisions, and definitions of terms used throughout Chapter 802.

§802.1. Purpose and General Provisions

New §802.1 sets forth the purpose and general provisions of Subchapter A. This new section retains without modification §801.51 of this title, concurrently adopted for repeal.

§802.2. Definitions

New §802.2(1) defines "Agency grantees" as grantees that receive funding from the Agency, such as Skills Development Fund, Wagner-Peyser 7(b), and Workforce Investment Act (WIA) statewide, to provide workforce services.

New §802.2(2), the definition of "appearance of a conflict of interest," retains the provisions of §801.52(1) of this title, concurrently adopted for repeal, with modifications to replace the term "workforce service contractor" with "workforce service provider," as defined in §802.2(15).

New §802.2(3), the definition of "Board decision-making position," retains without modification the provisions of §801.52(2) of this title, concurrently adopted for repeal.

New §802.2(4), the definition of "conflict of interest," retains the provisions of §801.52(3) of this title, concurrently adopted for repeal, with modifications to replace the term "workforce service contractor" with "workforce service provider," as defined in §802.2(15).

New §802.2(5), the definition of "corrective action plan," retains the provisions of §800.152(1) of this title, concurrently adopted for repeal, with modifications to replace the term "other entity" with "Agency grantee," as defined in §802.2(1) of this chapter.

New §802.2(6), the definition of "hearing," retains without modification the provisions of §800.152(2) of this title, concurrently adopted for repeal.

New §802.2(7), the definition of "hearing officer," retains without modification the provisions of §800.152(3) of this title, concurrently adopted for repeal.

New §802.2(8), the definition of "hearing representative," retains without modification the provisions of §800.152(4) of this title, concurrently adopted for repeal.

New §802.2(9), the definition of "level-one sanction," retains the provisions of §800.152(5) of this title, concurrently adopted for repeal, with modifications to:

--replace the term "other subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter; and

--make minor, nonsubstantive, editorial changes.

New §802.2(10), the definition of "level-two sanction," retains the provisions of §800.152(6) of this title, concurrently adopted for repeal, with modifications to:

--replace the term "other subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter; and

--make minor, nonsubstantive, editorial changes.

New §802.2(11), the definition of "level-three sanction," retains the provisions of §800.152(7) of this title, concurrently adopted for repeal, with modifications to:

--replace the term "other subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter; and

--make minor, nonsubstantive, editorial changes.

New §802.2(12), the definition of "particular matter," retains the provisions of §801.52(4) of this title, concurrently adopted for repeal, with modifications to make minor, nonsubstantive, editorial changes.

New §802.2(13), the definition of "party," retains without modification the provisions of §800.152(8) of this title, concurrently adopted for repeal.

New §802.2(14), the definition of "substantial financial interest," retains the provisions of §801.52(5) of this title, concurrently adopted for repeal, with modifications to make minor, nonsubstantive, editorial changes.

New §802.2(15), the definition of "workforce service provider," consolidates into one term the definition of "contract service providers" located in §800.302(1) and §800.352(1) of this title, concurrently adopted for repeal, and the definition of "workforce service contractor," §801.52(6) of this title, concurrently adopted for repeal.

New §802.2(16), the definition of "workforce service provider employee in a decision-making position" retains the provisions of §801.52(7) of this title, concurrently adopted for repeal, with modifications to replace the term "workforce service contractor" with "workforce service provider," as defined in §802.2(15).

SUBCHAPTER B. CONTRACTING

The Commission adopts new Subchapter B, Contracting, as follows:

New Subchapter B contains the Board contracting guidelines of the Integrity of the Texas Workforce System rules.

§802.21. Board Contracting Guidelines

New §802.21, relating to fiscal integrity provisions; bonding, insurance, and other methods of securing funds to cover losses; standards of conduct; and disclosures, retains the provisions of §801.54 of this title, concurrently adopted for repeal, with modifications to replace the term "workforce service contractor" with "workforce service provider," as defined in §802.2(15).

SUBCHAPTER C. LOCAL WORKFORCE DEVELOPMENT BOARD RESTRICTIONS

The Commission adopts new Subchapter C, Local Workforce Development Board Restrictions, as follows:

New Subchapter C contains the Board restrictions provisions of the Integrity of the Texas Workforce System rules, specifically, Board member conflicts of interest; employment of former Board employees by workforce service providers; prohibition against directly delivering services; and service delivery waiver requests.

§802.41. Board Member Conflicts of Interest

New §802.41, relating to Board member conflicts of interest, retains the provisions of §801.13(e) of this title, concurrently adopted for repeal, with modifications to make minor, nonsubstantive, editorial changes.

§802.42. Employment of Former Board Employees by Workforce Service Providers

New §802.42, relating to post-employment restriction, exceptions, corrective actions, and particular matter, retains the provisions of §801.55 of this title, concurrently adopted for repeal, with modifications to replace the term "workforce service contractor" with "workforce service provider," as defined in §802.2(15).

§802.43. Prohibition against Directly Delivering Services

New §802.43(a), relating to prohibition against directly delivering services, retains the provisions of §801.53(c) of this title, concurrently adopted for repeal, with modifications to:

--replace the term "Texas Workforce Centers" with "Workforce Solutions Offices," as defined in §801.23(4) of this title, concurrently adopted for amendment; and

--replace the term "workforce service contractor" with "workforce service provider," as defined in §802.2(15).

§802.44. Service Delivery Waiver Requests

New §802.44, relating to the purpose of rule; provisions from which Boards can submit a waiver request; requesting a waiver; and duration of waiver, retains the provisions of §801.2 of this title, concurrently adopted for repeal, with modifications to replace the term "Texas Workforce Centers" with "Workforce Solutions Offices," as defined in §801.23(4) of this title, concurrently adopted for amendment.

SUBCHAPTER D. AGENCY MONITORING ACTIVITIES

The Commission adopts new Subchapter D, Agency Monitoring Activities, as follows:

New Subchapter D contains Agency monitoring activities provisions of the Integrity of the Texas Workforce System rules, specifically, purpose of the subchapter; program and fiscal monitoring; program monitoring activities; fiscal monitoring activities; Agency monitoring reports and resolution; access to records; and Commission evaluation of Board oversight capacity.

§802.61. Purpose

New §802.61, relating to the purpose of Subchapter D, retains the provisions of §800.301 of this title, concurrently adopted for repeal, with modifications to replace the terms "subrecipient" and "contract service provider" with "Board," "workforce service provider," and "Agency grantee" as defined in §800.2(3) of this title and §802.2(15) and §802.2(1) of this chapter, respectively.

§802.62. Program and Fiscal Monitoring

New §802.62, relating to the Agency's program and fiscal monitoring, retains the provisions of §800.303 of this title, concurrently adopted for repeal, with modifications to:

--replace the terms "subrecipient" and "contract service provider" with "Board," "workforce service provider," and "Agency grantee" as defined in §800.2(3) of this title and §802.2(15) and §802.2(1) of this chapter, respectively; and

--make minor, nonsubstantive, editorial changes.

§802.63. Program Monitoring Activities

New §802.63, relating to the Agency's program monitoring activities, retains the provisions of §800.304 of this title, concurrently adopted for repeal, with modifications to:

--replace the terms "subrecipient" and "contract service provider" with "Board," "workforce service provider," and "Agency grantee," as defined in §800.2(3) of this title and §802.2(15) and §802.2(1) of this chapter, respectively; and

--make minor, nonsubstantive, editorial changes.

§802.64. Fiscal Monitoring Activities

New §802.64(a), relating to the Agency's fiscal monitoring activities, retains the provisions of §800.305 of this title, concurrently adopted for repeal, with modifications to:

--replace the terms "subrecipient" and "contract service provider" with "Board," "workforce service provider," and "Agency grantee" as defined in §800.2(3) of this title and §802.2(15) and §802.2(1) of this chapter, respectively; and

--remove the phrase "for all WIA funds" because fiscal monitoring activities apply to all funds.

§802.65. Agency Monitoring Reports and Resolution

New §802.65, relating to Agency Monitoring Reports and Resolution, retains the provisions of §800.306 and §800.307 of this title, concurrently adopted for repeal, with modifications to:

--better reflect the process that the Agency's monitoring department uses following an on-site visit with a Board, workforce service provider, or Agency grantee;

--replace the terms "subrecipient" and "contract service provider" with "Board," "workforce service provider," and "Agency grantee" as defined in §800.2(3) of this title and §802.2(15) and §802.2(1) of this chapter, respectively; and

--remove the specific requirements for "WIA funded activities," because this section applies to all activities.

§802.66. Access to Records

New §802.66, relating to the right of access for the Agency, and for Boards and Agency grantees, retains the provisions of §800.308 of this title, concurrently adopted for repeal, with modifications to:

--replace the term "reasonable access" with "unrestricted access." The Commission's intent is to clearly communicate that the Agency has the right to access all public records maintained by Boards, workforce service providers, and Agency grantees; and that Agency grantees have the right to access to all public records maintained by workforce service providers;

--state that the Agency is the owner of all public records maintained by Boards, workforce service providers, and Agency grantees in order to clarify federal administrative standards in OMB Circulars A-102 and A-110 regarding retention of and access to records;

--replace the terms "subrecipient" and "contract service provider" with "Board," "workforce service provider," and "Agency grantee" as defined in §800.2(3) of this title and §802.2(15) and §802.2(1) of this chapter, respectively;

--add subsection (d), relating to the Board's responsibility for maintenance and retention of records as well as the Agency's right to access, when the Board's relationship with the workforce service provider ends;

--add subsection (e), relating to custody of records; and

--add subsection (f), regarding compliance with single audit requirements.

§802.67. Commission Evaluation of Board Oversight Capacity

New §802.67, relating to the process and criteria used by the Commission to evaluate Board capacity to oversee and manage local funds and the delivery of local workforce services, retains the provisions of §800.309 of this title, concurrently adopted for repeal, with modifications to:

--add "Commission rules contained in Part 20 of this title" and "the Agency's Financial Manual for Grants and Contracts, and other Agency guidance" to the list of items the Commission uses to evaluate Boards' compliance and performance;

--replace the term "contractors" with "workforce service providers," as defined in §802.2(15);

--replace the term "local career development centers" with "Workforce Solutions Offices," as defined in §801.23(4) of this title, concurrently adopted for amendment;

--clarify that a Board will be rated as above standards if it "meets its targets as defined in §800.2(13) of this title on 90 percent" of its measures and does not miss the target on any single measure by more the "10 percent of target";

--clarify that a Board will be rated as within standards if it "meets its targets as defined in §800.2(13) of this title on 80 percent" of its measures and does not miss the target on any single measure by more than "15 percent of target";

--add that a Board "under level-one, -two, or -three sanction as defined in §802.123 of this chapter will be rated as below standards."

--add that "the Commission may consider any extraordinary situation related to any of the factors identified in subsection (b) of this section"; and

--add that the Commission may exclude from consideration under this section performance on measures "for which the Commission finds good cause exists for failure to meet the target." The economic downturn has shown that there are factors outside of the Boards' control that can contribute to the failure to meet performance expectations. Allowing the Commission to assess good cause acknowledges that there are times when a Board's failure to meet targets is a result of external circumstances beyond the Board's control.

SUBCHAPTER E. BOARD AND WORKFORCE SERVICE PROVIDER MONITORING ACTIVITIES

The Commission adopts new Subchapter E, Board and Workforce Service Provider Monitoring Activities, as follows:

New Subchapter E contains the Board and workforce service provider monitoring activities provisions of the Integrity of the Texas Workforce System rules, specifically, scope and purpose; Board and workforce service provider monitoring; risk assess-

ment; monitoring plan; controls over monitoring; reporting and resolution requirements; and independent audit requirements.

§802.81. Scope and Purpose

New §802.81, relating to the scope and purpose of Subchapter E, retains the provisions of §800.351 of this title, concurrently adopted for repeal, with modifications to replace the terms "subrecipients" and "contract service providers" with "Boards" and "workforce service providers" as defined in §800.2(3) of this title and §802.2(15) of this chapter, respectively.

§802.82. Board and Workforce Service Provider Monitoring

New §802.82, relating to Board and workforce service provider monitoring, retains the provisions of §800.353 of this title, concurrently adopted for repeal, with modifications to replace the terms "subrecipients," "contract service providers," and "entities" with "Board" and "workforce service providers," as defined in §800.2(3) of this title and §802.2(15) of this chapter, respectively.

§802.83. Risk Assessment

New §802.83, relating to risk assessment, retains the provisions of §800.354 of this title, concurrently adopted for repeal, with modifications to:

--replace the terms "subrecipient" and "contract service provider" with "Boards" and "workforce service providers," as defined in §800.2(3) of this title and §802.2(15) of this chapter, respectively; and

--make minor, nonsubstantive, editorial changes.

§802.84. Monitoring Plan

New §802.84, relating to monitoring plans, retains the provisions of §800.355 of this title, concurrently adopted for repeal, with modifications to:

--replace the terms "subrecipients" and "contract service providers" with "Boards" and "workforce service providers," as defined in §800.2(3) of this title and §802.2(15) of this chapter, respectively;

--remove the requirement for the monitoring plan to include the estimated time budgeted to perform each review. The Agency's Subrecipient Monitoring department has never required this of Boards; therefore, the provision is not included in this chapter; and

--make minor, nonsubstantive, editorial changes.

§802.85. Controls over Monitoring

New §802.85, relating to controls over monitoring, retains the provisions of §800.357 of this title, concurrently adopted for repeal, with modifications to replace the terms "subrecipients" and "contract service providers" with "Boards" and "workforce service providers," as defined in §800.2(3) of this title and §802.2(15) of this chapter, respectively.

§802.86. Reporting and Resolution Requirements

New §802.86, the reporting and resolution requirements for Boards and workforce service providers, retains the provisions of §800.358 of this title, concurrently adopted for repeal, with modifications to:

--replace the terms "subrecipient" and "contract service providers" with "Boards" and "workforce service providers," as defined in §800.2(3) of this title and §802.2(15) of this chapter, respectively;

--replace the term "governing Board" with "Board members" for better clarity;

--remove the requirement that a copy of monitoring reports be provided to the Agency upon request. This provision is no longer required under the Commission's new approval process for monitoring reports; and

--make minor, nonsubstantive, editorial changes.

§802.87. Independent Audit Requirements

New §802.87 requires that Boards, workforce service providers, and Agency grantees shall ensure that an annual audit or program-specific audit is obtained in accordance with the following:

(1) Single Audit Act Amendments of 1996 (Public Law 104-156);

(2) OMB Circular A-133 and Compliance Supplement;

(3) *Government Auditing Standards* (U.S. Government Accountability Office); and

(4) State of Texas Single Audit Circular within the Uniform Grant Management Standards Act (Texas Government Code, Chapter 783).

This new section aligns with current independent audit requirements, and does not retain the provisions of repealed §800.359.

SUBCHAPTER F. PERFORMANCE AND ACCOUNTABILITY

The Commission adopts new Subchapter F, Performance and Accountability, as follows:

New Subchapter F contains performance and accountability provisions of the Integrity of the Texas Workforce System rules, specifically, scope and purpose; performance requirements and expectations; performance review and assistance; and performance improvement actions.

§802.101. Scope and Purpose

New §802.101, relating to the scope and purpose of Subchapter F, retains the provisions of §800.151 of this title, concurrently adopted for repeal, with modifications to:

--replace the term "subrecipients of the Agency" with "workforce service providers," and "Agency grantees" as defined §802.2(15) and §802.2(1) of this chapter, respectively;

--replace the term performance "standards" with "targets" to align with §802.2(13) of this title, concurrently adopted for amendment;

--replace the term "Performance Improvement Plan" with "technical assistance plan." The Commission's intent is to clarify that a technical assistance plan is not punitive; rather it outlines strategies to assist a Board with improving compliance or performance. Thus, the Commission believes this new term better describes the plan; and

--make minor, nonsubstantive, editorial changes.

§802.102. Performance Requirements and Expectations

New §802.102, relating to the Commission's performance requirements and expectations, retains the provisions of §800.81 of this title, concurrently adopted for repeal, with modifications to:

--add the term "Agency grantee" as defined in §802.2(1) of this chapter;

--provide a more comprehensive list of items with which Boards and Agency grantees must comply;

--add that "the Commission may adopt additional performance incentives";

--add that a request for a performance target adjustment must be submitted "in the format prescribed by the Agency"; and

--make minor, nonsubstantive, editorial changes.

§802.103. Performance Review and Assistance

New §802.103, relating to the Commission's role in performance review and assistance, retains the provisions of §800.83(a), (c), and (d) of this title, concurrently adopted for repeal, with modifications to:

--replace the term "Performance Improvement Plan" with "technical assistance plan." The Commission's intent is to clarify that a technical assistance plan is not punitive; rather it outlines strategies to assist a Board with improving compliance or performance. Thus, the Commission believes this new term better describes the plan;

--replace the terms "subrecipients" and "contractors" with "workforce service providers" and "Agency grantees," as defined in §802.2(15) and §802.2(1) of this chapter, respectively; and

--make minor, nonsubstantive, editorial changes.

§802.104. Performance Improvement Actions

New §802.104, relating to performance improvement actions, retains the provisions of §800.83(e) of this title, concurrently adopted for repeal, with modifications to:

--replace the term "Performance Improvement Plan" with "technical assistance plan." The Commission's intent is to clarify that a technical assistance plan is not punitive; rather it outlines strategies to assist a Board with improving compliance or performance. Thus, the Commission believes this new term better describes the plan;

--replace the term "contractor service provider" with "workforce service provider" and "Agency grantee," as defined in §802.2(15) and §802.2(1) of this chapter, respectively; and

--make minor, nonsubstantive, editorial changes.

SUBCHAPTER G. CORRECTIVE ACTIONS

The Commission adopts new Subchapter G, Corrective Actions, as follows:

New Subchapter G contains the corrective actions provisions of the Integrity of the Texas Workforce System rules, specifically, imposition of corrective actions and corrective action plans; intent to sanction; sanctions; penalties for noncompliance with requirements; and sanction determination.

§802.121. Imposition of Corrective Actions and Corrective Action Plans

New §802.121(a), relating to the Agency's ability to impose corrective actions for failure by a Board or Agency grantee to ensure compliance with contracted performance measures; contract provisions; and items listed in §802.102(b) of this chapter, retains the provisions of §800.171(a) of this title, concurrently adopted for repeal, with modifications to:

--add the term "Agency grantee," as defined in §802.2(1) of this chapter; and

--make minor, nonsubstantive, editorial changes.

New §802.121(b) provides that the Agency may impose corrective actions for failure by a Board or Agency grantee to appropriately oversee of the delivery of services and ensure the effective and efficient use of funds. The Commission's intent is to convey a Board's responsibility to actively oversee the management of funds and the appropriate delivery of services to ensure that the needs of the workforce area's citizens are addressed within the resources allocated by the Commission.

New §802.121(c), relating to a Board or Agency grantee's failure to cooperate and comply with the Agency's performance improvement actions, including technical assistance plans, retains the provisions of §800.83(f) of this title, concurrently adopted for repeal, with modifications to replace "Performance Improvement Plan" with "technical assistance plan." The Commission's intent is to clarify that a technical assistance plan is not punitive; rather it outlines strategies to assist a Board with improving compliance or performance. Thus, the Commission believes this new term better describes the plan.

New §802.121(d), setting forth the four, nonsequential, corrective actions the Agency may impose, retains the provisions of §800.172(d) of this title, concurrently adopted for repeal, without modifications to make minor, nonsubstantive, editorial changes.

New §802.121(e), providing that the Agency may impose a higher level of sanction on a Board or Agency grantee, if a sanction is currently imposed when another sanctionable act occurs or is discovered, retains the provisions of §800.171(b) of this title, concurrently adopted for repeal, with modifications to:

--replace the term "subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter; and

--make minor, nonsubstantive, editorial changes.

New §802.121(f), relating to a corrective action plan, retains the provisions of §800.174(b) of this title, concurrently adopted for repeal, with modifications to:

--replace the terms "Board's contractor" and "subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter;

--replace the term "Texas Workforce Center" with "Workforce Solutions Office," as defined in §801.23(4) of this title, concurrently adopted for amendment; and

adds that the Agency may require a Board or Agency grantee be ineligible for additional discretionary or other funds "including incentive awards."

§802.122. Intent to Sanction

New §802.122, relating to the Agency's issuance of an intent to sanction, retains the provisions of §800.161 of this title, concurrently adopted for repeal, with modifications to:

--remove the provision of §800.161(b) that "an Intent to Sanction letter shall not be required prior to the Agency placing a Board in sanction status or assessing a penalty." In accordance with §802.121(d) corrective actions may be imposed in nonsequential order; and

--make minor, nonsubstantive, editorial changes.

§802.123. Sanctions

New §802.123, relating to sanctionable acts for which the Agency may impose a level-one, level-two, or level-three

sanction on a Board or Agency grantee, retains the provisions of §800.172 of this title, concurrently adopted for repeal, with modifications to:

--replace the term "Performance Improvement Plan" with "technical assistance plan." The Commission's intent is to clarify that a technical assistance plan is not punitive; rather it outlines strategies to assist a Board with improving compliance or performance. Thus, the Commission believes this new term better describes the plan;

--replace the term "subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter.

--add the phrase "rectifying health and safety may include investigating a complaint, taking appropriate corrective actions, or making referrals to appropriate authorities" to align with subsection (c)(4) of this section; and

--make minor, nonsubstantive, editorial changes.

§802.124. Penalties for Noncompliance with Requirements

New §802.124(a), setting forth that the Agency may impose penalties on a Board or Agency grantee based on the criteria as determined appropriate by the Agency given the totality of the circumstances surrounding the occurrence of the sanctionable act or acts, retains the provisions of §800.174(a) of this title, concurrently adopted for repeal, with modifications to:

--remove the term "corrective actions," which no longer applies to this subsection; and

--replace the term "subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter.

New §802.124(b) provides that the Agency may impose penalties for sanctionable acts listed in this subchapter. Notwithstanding the list of sanctionable acts appearing after each specific level of sanction in §802.123 of this subchapter, the Agency may assign a higher or lower sanction level based on the severity or mitigating circumstances surrounding the sanctionable acts. This new subsection retains the provisions of §800.171(b) and §800.174(d) of this title, concurrently adopted for repeal, with modifications to make minor, nonsubstantive, editorial changes.

New §802.124(c), relating to penalties that the Commission may recommend to TWIC for imposition on Boards, retains the provisions of §800.174(c)(7) - (10) of this title, concurrently adopted for repeal, with modifications to make minor, nonsubstantive, editorial changes.

New §802.124(d), setting forth that more than one corrective action may be imposed in response to one occurrence of a sanctionable act, and that the corrective actions imposed for one or more occurrences may correlate with the sanction level imposed on a Board or Agency grantee, retains the provisions of §800.174(d) of this title, concurrently adopted for repeal, with modifications to replace the term "subrecipient of the Agency" with Agency grantee," as defined in §802.2(1) of this chapter.

New §802.124(e), setting forth that a Board's or Agency grantee's failure to complete the corrective actions described in this subchapter within the specified time limits may result in the Agency imposing penalties under this subchapter and withholding contract payments to the Board or Agency grantee, retains the provisions of §800.175(a)(2) of this title, concurrently adopted for repeal, with modifications to:

--add the term "Agency grantee," as defined in §802.2(1) of this chapter; and

--replace the term "WIA payments" with "contract payments" to clarify that this rule applies to all contract payments.

New §802.124(f), relating to penalties for second-year WIA nonperformance, retains the provisions of §800.175(b) of this title, concurrently adopted for repeal, with modifications to clarify how the Commission intends to measure these criteria.

New §802.124(g), relating to penalties for failures regarding the one-stop service delivery network, retains the provisions of §800.175(d) of this title, concurrently adopted for repeal, with modifications to:

--remove the term "WIA" to clarify that this rule applies to all administrative expenses;

--add that a Board's "failure to properly certify Workforce Solutions Offices as defined in §801.24 of this title" may result in imposition of penalties and withholding of payment of administrative expenses; and

--make minor, nonsubstantive, editorial changes.

§802.125. Sanction Determination

New §802.125, relating to sanction determination process, retains the provisions of §800.18 of this title, concurrently adopted for repeal, with modifications to:

--add the term "Agency grantee," as defined in §802.2(1) of this chapter;

--replace the term "Texas Council on Workforce and Economic Competitiveness" with "TWIC," as defined in §800.2(19) of this title, concurrently adopted for amendment;

--add "Agency grantees' executive leadership" as a recipient of the sanction determination;

--replace the reference to "facsimile (fax) transmission" with "electronic transmission," a broader term that includes other methods, such as e-mail; and

--make minor, nonsubstantive, editorial changes.

SUBCHAPTER H. REMEDIES

The Commission adopts new Subchapter H, Remedies, as follows:

New Subchapter H contains the remedies provisions of the Integrity of the Texas Workforce System rules, specifically, informal conferences and informal dispositions; appeal; hearing procedures; postponements, continuances, and withdrawals; evidence; hearing officer independence and impartiality; ex parte communications; hearing decision; motion for reopening; motion for rehearing; finality of decision; and repayment.

§802.141. Informal Conferences and Informal Dispositions

New §802.141, defining an informal conference, retains the provisions of §800.176 of this title, concurrently adopted for repeal, with modifications to:

--replace the term "subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter; and

--make minor, nonsubstantive, editorial changes.

§802.142. Appeal

New §802.142, setting forth the procedures under which a Board or Agency grantee may appeal a final determination or sanction determination, retains the provisions of §800.191 of this title, concurrently adopted for repeal, with modifications to:

--add the term "Agency grantee," as defined in §802.2(1) of this chapter;

--add the statement that "Failure by a Board, workforce service provider, or Agency grantee to timely request a hearing waives the right to a hearing"; and

--make minor, nonsubstantive, editorial changes.

§802.143. Hearing Procedures

New §802.143, setting forth the procedures for sanction determination hearings, retains without modification the provisions of §800.192 of this title, concurrently adopted for repeal.

§802.144. Postponements, Continuances, and Withdrawals

New §802.144, setting forth the circumstances under which a sanction determination hearing may be postponed, continued, or withdrawn, retains the provisions of §800.193 of this title, concurrently adopted for repeal, with modifications to add the term "Agency grantee," as defined in §802.2(1) of this chapter.

§802.145. Evidence

New §802.145, relating to evidence generally, exchange of exhibits, stipulations, experts and evaluations, and subpoenas, retains without modification the provisions of §800.194 of this title, concurrently adopted for repeal.

§802.146. Hearing Officer Independence and Impartiality

New §802.146, relating to the independence and impartiality of hearing officers, retains without modification the provisions of §800.195 of this title, concurrently adopted for repeal.

§802.147. Ex Parte Communications

New §802.147, relating to ex parte communications, retains without modification the provisions of §800.196 of this title, concurrently adopted for repeal.

§802.148. Hearing Decision

New §802.148, relating to the procedures for a hearing decision, retains without modification the provisions of §800.197 of this title, concurrently adopted for repeal.

§802.149. Motion for Reopening

New §802.149, relating to a motion for reopening, retains without modification the provisions of §800.198 of this title, concurrently adopted for repeal.

§802.150. Motion for Rehearing

New §802.150, relating to a motion for rehearing, retains the provisions of §800.199 of this title, concurrently adopted for repeal, with modifications to add the term "Agency grantee," as defined in §800.2(1) of this chapter.

§802.151. Finality of Decision

New §802.151, relating to finality of decision, retains without modification the provisions of §800.200 of this title, concurrently adopted for repeal.

§802.152. Repayment

New §802.152, relating to repayment to the Agency by a Board and chief elected officials, or an Agency grantee, retains the provisions of §800.175(e) of this title, concurrently adopted for repeal, with modifications to:

--remove the term "WIA" because this rule applies to repayment of all funds; and

--add that an Agency grantee shall be liable for repayment to the Agency from nonfederal funds for expenditures that are found by the Agency not to have been expended in accordance with §802.102; and

--make minor, nonsubstantive, editorial changes.

SUBCHAPTER I. INCENTIVE AWARDS

The Commission adopts new Subchapter I, Incentive Awards, as follows:

New Subchapter I contains the incentive awards provisions of the Integrity of the Texas Workforce System rules, specifically, scope and purpose; definitions; types of awards; data collection; Board classification; performance awards; WIA local incentive awards; and job placement incentive awards.

§802.161. Scope and Purpose

New §802.161, setting forth the scope and purpose of incentive awards, retains the provisions of §800.101 of this title, concurrently adopted for repeal, with modifications to make minor, nonsubstantive, editorial changes.

§802.162. Definitions

New §802.162, defining "allocation of funds," "classification," "extraordinary circumstances," "local coordination," "regional cooperation," and "workforce development programs," retains the provisions of §800.102 of this title, concurrently adopted for repeal, with modifications to make minor, nonsubstantive, editorial changes.

§802.163. Types of Awards

New §802.163, defining the two types of incentive awards--nonmonetary and monetary--retains the provisions of §800.103 of this title, concurrently adopted for repeal, with modifications to:

--remove the term "Best Overall" to align with §802.166, which refers only to "performance awards";

--make minor, nonsubstantive, editorial changes.

§802.164. Data Collection

New §802.164, relating to the collection of data, retains without modification the provisions of §800.104 of this title, concurrently adopted for repeal.

§802.165. Board Classification

New §802.165, relating to Board classification, retains the provisions of §800.105 of this title, concurrently adopted for repeal, with modifications to make minor, nonsubstantive, editorial changes.

§802.166. Performance Awards

New §802.166, governing the Commission’s performance awards, retains the provisions of §800.106 of this title, concurrently adopted for repeal, with modifications to:

--remove the phrase "other than in the first year of the implementation of this rule" from subsection (d)(1) of this section. Under Chapter 800, this rule became effective September 29, 2003; therefore, this statement no longer applies;

--add "a listing of awards" as an additional item that may be included in the notice; and

--make minor, nonsubstantive, editorial changes.

§802.167. Workforce Investment Act Local Incentive Awards

New §802.167, relating to the WIA Local Incentive Awards, retains the provisions of §800.107 of this title, concurrently adopted for repeal, with modifications to:

--add that the "Commission may modify the assignment of awards based on factors that the Commission identifies as extraordinary circumstances"; and

--make minor, nonsubstantive, editorial changes.

§802.168. Job Placement Incentive Awards

New §802.168, relating to the job placement incentive awards, retains the provisions of §800.108 of this title, concurrently adopted for repeal, with modifications to:

--replace the term Choices "individual" with "eligible," as defined in §811.2 of this title;

--replace the term "contractors" with "workforce service providers," as defined in §802.2(15) of this chapter;

--add that the "Commission may modify the assignment of awards based on factors that the Commission identifies as extraordinary circumstances"; and

--make minor, nonsubstantive, editorial changes.

No comments were received.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

SUBCHAPTER A. PURPOSE AND GENERAL PROVISIONS

40 TAC §802.1, §802.2

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2011.

TRD-201100196
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 7, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 475-0829

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SUBCHAPTER B. CONTRACTING

40 TAC §802.21

The new rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2011.

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Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 7, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 475-0829

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SUBCHAPTER C. LOCAL WORKFORCE DEVELOPMENT BOARD RESTRICTIONS

40 TAC §§802.41 - 802.44

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2011.

TRD-201100198
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 7, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 475-0829

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SUBCHAPTER D. AGENCY MONITORING ACTIVITIES

40 TAC §§802.61 - 802.67

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2011.

TRD-201100199
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 7, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 475-0829

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SUBCHAPTER E. BOARD AND WORKFORCE SERVICE PROVIDER MONITORING ACTIVITIES

40 TAC §§802.81 - 802.87

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2011.

TRD-201100200
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 7, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 475-0829

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SUBCHAPTER F. PERFORMANCE AND ACCOUNTABILITY

40 TAC §§802.101 - 802.104

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2011.

TRD-201100201
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 7, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 475-0829

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SUBCHAPTER G. CORRECTIVE ACTIONS

40 TAC §§802.121 - 802.125

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2011.

TRD-201100202
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 7, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 475-0829

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SUBCHAPTER H. REMEDIES

40 TAC §§802.141 - 802.152

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2011.

TRD-201100203

Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 7, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 475-0829

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SUBCHAPTER I. INCENTIVE AWARDS

40 TAC §§802.161 - 802.168

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2011.

TRD-201100204
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 7, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 475-0829

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Office of the Governor

Title 1, Part 1

The Office of the Governor (OOG) has completed its review of Texas Administrative Code, Title 1, Part 1, Chapter 5 relating to the Budget and Planning Office. The review was conducted in accordance with the requirements of Texas Government Code, §2001.039.

The notice of review was published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6451). The OOG received no comments regarding the proposed rule review.

After completing the review, the OOG finds that the reasons for adopting Subchapter A of Chapter 5 continue to exist and readopts this subchapter without changes pursuant to Texas Government Code, §2001.039. The OOG also finds that the reasons for adopting Subchapters B, C and D of Chapter 5 do not continue to exist and is proposing repeal of these subchapters in a separate rulemaking.

This concludes the review of Texas Administrative Code, Title 1, Part 1, Chapter 5.

TRD-201100289
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: January 24, 2011

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §80.100(b)(1)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(877) 313-3023 ~~(800) 500-7074~~, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR MANUFACTURER'S LICENSE

(Please type or print clearly.)

Check one: [ ] Corporation [ ] Partnership [ ] Sole Proprietorship [ ] Other

1. Legal Business Name:	
2. Have you ever been licensed by TDHCA?	[ ]YES [ ] NO If yes, provide license number:
3. Physical Location Address:	**City, State, ZIP and County**
4. Phone:	**Fax:**
5. Mailing Address:	**City, State, ZIP and County**
6. Email Address:	**Website Address:**
7. Date of business registration or date incorporated ~~applicant became owner, operator (or date incorporated)~~:	

8. Provide list of all other business or trade names, or ~~and the names of all~~ other business organizations that are subject to regulation by the Department, in which you are principal or have ownership interest in ~~this chapter and the name and address of any such business organization registered with the secretary of state (additional may be listed on a separate sheet)~~.

Business or Trade Name(s)	Physical Address, City, State, and ZIP

9. Provide complete information on ALL owners, principals, partners and/or corporate officers (additional may be listed on a separate sheet). The social security number is now required.
NOTE: Providing your social security number is optional, HOWEVER, the processing of your application may be delayed without it.

Legal Name and Title	Mailing Address, City, State & ZIP	Phone	Date of Birth	SSN

10. Provide complete list of all persons (other than the principals listed above), who directly or indirectly participate in management or policy decisions for this applicant. The social security number is now required.

Legal Name and Title	Mailing Address, City, State & ZIP	Phone	Date of Birth	SSN

11~~10~~. A CRIMINAL BACKGROUND CHECK WILL BE RUN. Have you, a corporate officer, or a partner, ever acquired a criminal record, which may consist of conviction, deferred adjudication, plead guilty, or nolo contendere, for any felony or misdemeanor offense, other than a Class C Misdemeanor for traffic violations, within the five years preceding this application? ~~Have you, a corporate officer or partner, been convicted of any felony or misdemeanor offense, OTHER than a Class C misdemeanor for traffic violations, within the five years PRECEDING this application?~~	[ ] NO ~~YES~~ [ ] YES ~~NO~~ If YES, complete the required Criminal Record Affidavit ~~Conviction Questionnaire~~ ensuring that you provide accurate and thorough details sufficient to persuade the Department that your conviction does not pose a threat to the consumer or the industry. If a criminal record is identified within the last five years and the applicant checked "no" the license may be denied. ~~A DPS criminal check will be performed.~~
12. Are you in arrears on any taxes owed to the State of Texas?	[ ] NO [ ] YES If you answered YES, provide proof that you are in good standing or that you have made payment arrangements.
13. Are you in arrears on a guaranteed student loan?	[ ] NO [ ] YES If you answered YES, provide proof that you are in good standing or that you have made payment arrangements.
14. Are you in arrears of any child support required by the family code?	[ ] NO [ ] YES If you answered YES, provide proof that you are in good standing or that you have made payment arrangements. If not in good standing, please contact the Office of Attorney General's Child Support Division at (800) 252-8014.
15~~11~~. **Plant Certification Date:**	
16~~12~~. **Production Inspection Primary Inspection Agency Label Prefix:**	
17~~13~~. **Design Approval Primary Inspection Agency:**	
18~~14~~. **Provide physical address, city, state and ZIP, where records will be kept (this can be the principal location or an alternate in-state location):**	

19~~15~~. Will you have a manufacturing plant or service facility in Texas? [ ] YES [ ] NO

If NO, to assure the availability of prompt and satisfactory warranty service, a manufacturer which does not have a licensed manufacturing plant or other facility in Texas from which warranty service and repairs can be provided and made, shall be bonded or post other security in an additional amount of $100,000.

Or, to be exempt from the additional security, you must have a bona fide service facility in Texas, pursuant to §80.40(d) of the Administrative Rules and §1201.106 of the Standards Act.

Name of Facility:
Address:
City/State/ZIP:
Phone:

Certification

License is subject to revocation, if the Department is **NOT** notified in writing of any changes in the information given on this application or if there is a violation of the law.

With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.

(Signature of Applicant or President, if incorporated) *(Date)*

(Signature of Secretary, if incorporated) *(Date)*

Department Use Only

Education:	*Fees:*	*Additional Requirements:*
[ ] 20 hours of Department Education in Austin, Texas	[ ] $850.00 Manufacturer Licensing Fee	[ ] $100,000 BOND/CD [ ] $100,000 ADDITIONAL BOND/CD

Figure: 10 TAC §80.100(b)(2)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489

(877) 313-3023 ~~(800) 500-7074~~, (512) 475-2200 FAX (512) 475-3506 ~~(512) 475-1109~~

Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR LICENSE
(FOR A RETAILER, BROKER, INSTALLER AND/OR REBUILDER)

(Please type or print clearly.)

Check one: [ ] Corporation [ ] Partnership [ ] Sole Proprietorship [ ] Other

1. Legal Business Name:			
2. Have you ever been licensed by TDHCA?	[ ]YES [ ]NO If yes, provide license number:		
3. Physical Location Address:	City, State, ZIP and County		
4. Phone:		Fax:	
5. Mailing Address:	City, State, ZIP and County		
6. Email Address:	**Website Address:**		

7~~6~~. Date **of business registration or date incorporated** ~~applicant became owner, operator (or date incorporated)~~:

8~~7~~. Provide list of all **other business or** trade names**, or** ~~and the names of all~~ other business organizations **that are** subject to **regulation by the Department, in which you are a principal or have ownership interest in** ~~this chapter and the name and address of any such business organization registered with the secretary of state (additional may be listed on a separate sheet)~~.

Business or Trade Name**(s)**	Physical Address, City, State, and ZIP

9~~8~~. Provide complete information on ALL owners, principals, partners and/or corporate officers (additional may be listed on a separate sheet). **The social security number is now required.**

~~*NOTE: Providing your social security number is optional, HOWEVER, the processing of your application may be delayed without it.*~~

Legal Name and Title	Mailing Address, City, State & ZIP	Phone	Date of Birth	SSN

10~~9~~. Provide complete list of all persons (other than the principals listed above), who directly or indirectly participate in management or policy decisions for this applicant. **The social security number is now required.**

Legal Name and Title	Mailing Address, City, State & ZIP	Phone	Date of Birth	SSN

11~~10~~. A CRIMINAL BACKGROUND CHECK WILL BE RUN. Have you, a corporate officer, or a partner, ever acquired a criminal record, which may consist of conviction, deferred adjudication, plead guilty, or nolo contendere, for any felony or misdemeanor	[ ] **NO** ~~YES~~ [ ] **YES** ~~NO~~ If YES, complete the required Criminal **Record Affidavit** ~~Conviction Questionnaire~~ ensuring that you provide accurate and thorough details sufficient to persuade the Department that your conviction does not pose a threat to the consumer or the industry. **If a criminal record is identified within the last five years and the applicant checked "no" the license may be denied.** ~~A DPS criminal check will be performed.~~

offense, other than a Class C Misdemeanor for traffic violations, within the five years preceding this application? ~~Have you, a corporate officer or partner, been convicted of any felony or misdemeanor offense, OTHER than a Class C misdemeanor for traffic violations, within the five years PRECEDING this application?~~	

12~~11~~. Indicate which type of license you are applying for:

[ ] R= Retailer [ ] RB= Retailer/Broker [ ] RI=Retailer/Installer [ ] RBI=Retailer/Broker/Installer
[ ] B= Broker [ ] I= Installer [ ] RB=Rebuilder

13~~12~~. As applicable, indicate what function(s) you will be performing:	[ ] Transporting [ ] Installation
14~~13~~. Are you in arrears on any taxes owed to the State of Texas? ~~Are you in arrears on a guaranteed student loan?~~	[ ] NO ~~YES~~ [ ] YES ~~NO~~ If you answered YES ~~to either question~~, provide proof that you are in good standing ~~with them~~ or that you have made payment arrangements.
15. Are you in arrears on a guaranteed student loan?	**[ ] NO [ ] YES** **If you answered YES, provide proof that you are in good standing or that you have made payment arrangements.**
16. Are you in arrears of any child support required by the family code?	**[ ] NO [ ] YES** **If you answered YES, provide proof that you are in good standing or that you have made payment arrangements.**
17. Provide physical address, city, state and ZIP, where records will be kept (this can be the principal location or an alternate in-state location):	

Certification

License is subject to revocation, if the Department is NOT notified in writing of any changes in the information given on this application or if there is a violation of the law.

With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.

(Signature of Applicant or President, if incorporated) *(Date)* *(Signature of Secretary, if incorporated)* *(Date)*

Department Use Only

Education:	*Fees:*	*Additional Requirements:*
[ ] 20 hours of Department Education in Austin, Texas	[ ] $250.00 Education Fee [ ] $550.00 Retailer Licensing Fee [ ] $350.00 Broker Licensing Fee [ ] $350.00 Installer Licensing Fee [ ] $900.00 Retailer/Broker Licensing Fee [ ] $900.00 Ret./Installer Licensing Fee [ ] $1250.00 Ret./Brok./Inst. Licensing Fee	[ ] $50,000 BOND/CD

Figure: 10 TAC §80.100(b)(3)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(877) 313-3023 ~~(800) 500-7074~~, (512) 475-2200 FAX (512) 475-3506 ~~(512) 475-1109~~
Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR RETAILER WITH BRANCH LOCATIONS LICENSE

(Please type or print clearly.)

Check one: [ ] Corporation [ ] Partnership [ ] Sole Proprietorship [ ] Other

1. Business Name: _____
   DBA Name: _____
2. Business Owner's Name:
3. Have you ever been licensed by TDHCA? YES / NO If so, please provide license number:

4. Location Address:	City	State	Zip	County	Phone/Fax
5. Mailing Address:					

6. Email Address:	Website Address:

7. Provide list of all other business or trade names, or other business organizations that are subject to regulation by the Department, in which you are a principal or have ownership interest in.

Business or Trade Name(s)	Physical Address, City, State, and ZIP

8~~6~~. Date applicant became owner, operator (or date incorporated):

9~~7~~. Provide complete information on ALL owners, principals, partners and/or corporate officers ~~or partners.~~ (additional may be listed on a separate sheet). The social security number is now required.
~~*NOTE: Providing your social security number is optional, HOWEVER, the processing of your application may be delayed without it.*~~

Name and Title	Home Mailing Address	Home Phone	Date of Birth	SSN

10~~8~~. A CRIMINAL BACKGROUND CHECK WILL BE RUN. Have you, a corporate officer, or a partner, ever acquired a criminal record, which may consist of conviction, deferred adjudication, plead guilty, or nolo contendere, for any felony or misdemeanor offense, other than a Class C Misdemeanor for traffic violations, within the five years preceding this application? ~~Have you, a corporate officer or partner, been convicted of any felony or misdemeanor offense, OTHER than a Class C misdemeanor for traffic violations, within the five years PRECEDING this application?~~

[ ] ~~YES~~ NO [ ] ~~NO~~ YES If YES, complete the required Criminal Record Affidavit ~~Conviction Questionnaire~~ ensuring that you provide accurate and thorough details sufficient to persuade the Department that your conviction does not pose a threat to the consumer or the industry.
~~A DPS criminal check will be performed.~~ If a criminal record is identified within the last five years and the applicant checked "no" the license may be denied.

11~~9~~. Indicate which type of license you are applying for:
[ ] Register a primary location with branch locations specified on an attached sheet (attach bond for each location)
[ ] Register an additional branch location to an existing Retailers Branch

12~~10~~. What function(s) will you be performing: [ ] Transporting [ ] Installation

13~~11~~. Name of related person who attended licensing education class:

14. Are you in arrears on any taxes owed to the State of Texas?	**[ ] NO [ ] YES** **If you answered YES, provide proof that you are in good standing or that you have made payment arrangements.**
15. Are you in arrears on a guaranteed student loan?	**[ ] NO [ ] YES** **If you answered YES, provide proof that you are in good standing or that you have made payment arrangements.**
16. Are you in arrears of any child support required by the family code?	**[ ] NO [ ] YES** **If you answered YES, provide proof that you are in good standing or that you have made payment arrangements.**

~~**Are you in arrears on any taxes owed to the State of Texas? [ ] YES [ ] NO**~~
~~**Are you in arrears on a guaranteed student loan? [ ] YES [ ] NO**~~

Certification

License is subject to revocation, if the Department is **NOT** notified in writing of any changes in the information given on this application or if there is a violation of the law.

With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.

(Signature of Applicant or President, if incorporated) *(Date)* *(Signature of Secretary, if incorporated)* *(Date)*

Department Use Only

Education:	***Fees:***	***Additional Requirements:***
[ ] 20 hours of Department Education in Austin, Texas	[ ] $250.00 Education Fee [ ] $550.00 Retailer Licensing Fee [ ] $900.00 Retailer/Broker Licensing Fee [ ] $900.00 Ret./Installer Licensing Fee [ ] $1250.00 Ret./Brok/Inst. Licensing Fee	[ ] $50,000 BOND/CD

Figure: 10 TAC §80.100(b)(4)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489

(877) 313-3023 ~~(800) 500-7074~~, (512) 475-2200 FAX (512) 475-3506

Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR SALESPERSON'S LICENSE

(Please type or print clearly.)

1. Name of Salesperson:	**2. Date of Birth:**	—/—/—
3. Home Address:	**4. Social Security # (Required):**	———
City:	**State:**	**Zip:**
5. Telephone: Home ( )	**Telephone: Work ( )**	**Fax: ( )**
6. Sponsoring Retailer or Broker:		
Sponsoring Retailer's or Broker's Lic. #:		
7. Business Address:		
City:	**State:**	**Zip:**

8. List dates, employer and address for each job or position at which you have worked for the past three years. All gaps in employment must be explained.

(Dates)	*(Employer)*	*(Address)*
(Dates)	*(Employer)*	*(Address)*
(Dates)	*(Employer)*	*(Address)*

9. Have you ever been licensed by TDHCA? YES / NO If so, please provide license number:

10. A CRIMINAL BACKGROUND CHECK WILL BE RUN. Have you, a corporate officer, or a partner, ever acquired a criminal record, which may consist of conviction, deferred adjudication, plead guilty, or nolo contendere, for any felony or misdemeanor offense, other than a Class C Misdemeanor for traffic violations, within the five years preceding this application? ~~Have you, a corporate officer or partner, been convicted of any felony or misdemeanor offense, OTHER than a Class C misdemeanor for traffic violations, within the five years PRECEDING this application?~~	[ ] NO ~~YES~~ [ ] YES ~~NO~~ If YES, complete the required Criminal Record Affidavit ~~Conviction Questionnaire~~ ensuring that you provide accurate and thorough details sufficient to persuade the Department that your conviction does not pose a threat to the consumer or the industry. **If a criminal record is identified within the last five years and the applicant checked "no" the license may be denied.**
11. Are you in arrears on any taxes owed to the State of Texas?	[ ] NO ~~YES~~ [ ] YES ~~NO~~ **If you answered YES, provide proof that you are in good standing or that you have made payment arrangements.**
12. Are you in arrears on a guaranteed student loan?	[ ] NO ~~YES~~ [ ] YES ~~NO~~ **If you answered YES, provide proof that you are in good standing or that you have made payment arrangements.**
13. Are you in arrears of any child support required by the family code?	[ ] NO [ ] YES **If you answered YES, provide proof that you are in good standing or that you have made payment arrangements. If not in good standing, please contact the Office of Attorney General's Child Support Division at (800) 252-8014.**

Certification			
License is subject to revocation, if the Department is **NOT** notified in writing of any changes in the information given on this application or if there is a violation of the law. License will be suspended if the education requirements of TEX. OCC. CODE §1201.104(c) are not successfully completed within 90 days after the date the license is issued. With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct. *(Signature of Applicant)* *(Date)* *(Signature of Sponsoring Retailer or Broker)* *(Date)*			
Payment			
Attach the required license fee of $200.00 (two hundred dollars) to this application. Payment may be made by company or business firm check, money order or cashier's check. Please make payable to: ***Texas Department of Housing and Community Affairs.*** Mail to the address listed at the top of this form.			
Department Use Only			
Fees	[ ] $200.00 License Fee	Date Received:	/ /

Figure: 10 TAC §80.100(b)(5)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
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(877) 313-3023 ~~(800) 500-7074~~, (512) 475-2200 FAX (512) 475-3506 ~~475-1109~~
Internet Address: www.tdhca.state.tx.us/mh/index.htm

Continuous Manufactured Housing Licensing Surety Bond

The State of _____ MHD ~~TDHCA~~ license # (if known): _____

County of _____

I (we) _____ ,
(Name of Owner, Partner, or Corporate Officer)

to be licensed as a manufactured housing _____
(Manufacturer, Retailer, Broker, Installer, Or Rebuilder)

doing business as _____ / _____
(Assumed or Corporate Name) (Trade Name of Location)

at _____ / _____ ,
(Physical Street Address, City, State, Zip) (Mailing Address if Different)

(___) _____ , as PRINCIPAL and _____
(Telephone) (Surety)

as SURETY, duly authorized and qualified to do business as a surety company in this state, we are firmly bound unto the special account referred to in the Texas Manufactured Housing Standards Act (the "Act"), Subchapter I, as the Manufactured Homeowners' Recovery Fund, in the sum of $_____, payable at Austin, Travis County, Texas for use by the Texas Department of Housing and Community Affairs, Manufactured Housing Division ("MHD") to satisfy claims resulting from any violation by the licensee or cause of action directly related to the construction, re-building, sale, lease-purchase, exchange, brokerage, or installation of a manufactured home for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that the PRINCIPAL shall faithfully discharge all obligations, duties, and responsibilities under the Act as that statute is presently worded and as it may hereafter be amended to read, and all applicable rules and regulations of the Executive Director of the Manufactured Housing Division ~~Texas Department of Housing and Community Affairs~~ adopted to carry out the provisions of said Act, subject, however, to the following terms and conditions:

1) It is agreed that as of _____, 20___, this bond shall be in full force and effect and remain in effect until canceled by the surety.
2) This bond is valid when received by the Manufactured Housing Division (MHD) ~~Texas Department of Housing and Community Affairs'~~ Austin office.
3) The bonding company must provide written notification to MHD ~~the Department~~ at least sixty (60) days prior to the cancellation of this bond.
4) This bond shall be open to successive claims up to the face value of the bond. The surety shall not be liable for successive claims in excess of the ——bond amount, regardless of the number of years the bond remains in force.

IN WITNESS WHEREOF said PRINCIPAL and SURETY have executed this bond this _____ day of _____, 20_____, to be effective on the _____ day of _____, 20 _____.

Surety By: _____
(Signature)

_____
(Printed Name)

Title: _____

Surety Company Name: _____

Mailing Address: _____
Street / P.O. Box City Zip

Phone #: (___) _____ Fax #: (___) _____

Signature of Owner, Partner, or Corporate Officer: _____ Title: _____

Bond Number: _____
(For Surety Company's Use)

NOTE: The physical street address listed on this surety bond form must match the physical street address listed on the licensing application.

Figure: 10 TAC §80.100(b)(8)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

MAKING AN INFORMED DECISION ABOUT BUYING A MANUFACTURED HOME

IF YOU HAVE QUESTIONS CALL 1-800-500-7074

WWW.TDHCA.STATE.TX.US/MH

Ownership of ANY home brings many responsibilities. Buying a manufactured home involves many important and unique considerations. This disclosure is to assist you in recognizing and understanding many of those factors. Please read it carefully.

CHOOSING A MANUFACTURED HOME AS YOUR HOME: Manufactured homes come in a variety of sizes, styles, design features, amenities, and price ranges. All manufactured homes are built to federal standards established by the federal Department of Housing and Urban Development (HUD). Also, the federal government and the state of Texas requires manufacturers, retailers and installers to give certain warranties on manufactured homes. The type of warranties you receive will depend on whether you are purchasing a new or used manufactured home. You have the right to see the manufacturer's warranty and the retailer's warranty before entering into a binding agreement to purchase a manufactured home.

_____
initials

LEASE PURCHASE: "Lease Purchase" means entering into a lease contract for a manufactured home, in which the lessor retains title, containing a provision or, in another agreement, conferring on the lessee an option to purchase a manufactured home, pursuant to §1201.003(16) of the Occupations Code. Until the consumer exercises their option to purchase the manufactured home the seller maintains ownership of the home, and has the ability to evict a consumer if appropriate pursuant to your rental agreement and/or the Texas Property Code.

_____
initials

CHOOSING A MANUFACTURED HOME RETAILER: The State of Texas licenses and oversees manufacturers, retailers, brokers, salespersons, rebuilders, and installers of manufactured homes. The agency responsible for this licensing and oversight is the Texas Department of Housing and Community Affairs, Manufactured Housing Division (the "Department"). Your properly licensed manufactured home retailer should display, or be willing to show you, its license in its sales office. **Dealing with licensed parties can provide important consumer protections.**

_____
initials

DEPOSITS: You may be required by a manufactured home retailer to place a deposit on a home, regardless of whether the home is on the retailer's sales lot, is being sold at another location, or will be ordered from a factory. The amount of the deposit is determined between you and your retailer. The deposit becomes a down payment upon execution of a binding written purchase agreement. You have the right to demand a refund of the deposit or down payment, and receive that refund within 15 days thereafter, if you timely and properly rescind the purchase agreement.

_____

initials

FINANCING OPTIONS: A manufactured home in Texas has tremendous flexibility when it comes to financing because it can be financed as personal property (typically a consumer loan secured by the home only) or, if you own the land the home is on (or have a qualifying long term lease on the land) as real property (typically a mortgage loan secured by the home and the land). You should talk to possible lenders about the terms they can offer. If you think one lender is offering too high a rate, talk to another lender.

Consumer lenders must generally be registered with the Office of the Consumer Credit Commissioner. Mortgage loans are usually originated by mortgage brokers (licensed with the Savings and Mortgage Lending Department), mortgage bankers (registered with the Savings and Mortgage Lending Department), or financial institutions (regulated by state and/or federal regulators, depending on the type of financial institution).

WHEN YOU MAKE A DECISION ABOUT BUYING A MANUFACTURED HOME, PLAN FOR FLEXIBILITY AND CHANGE.

YOUR LOAN WILL BE A **MAJOR** FACTOR IN DETERMINING YOUR PAYMENTS, BUT THERE ARE OTHER IMPORTANT FACTORS YOU SHOULD ALSO THINK ABOUT, SUCH AS:

- Adjustable rate loans – If rates go up, your loan payments will go up.
- Property taxes – Changes in property valuation and changes in tax rate can result in changes in your payments.
- Insurance – If premiums increase, your payments will go up.
- Lot rent – If you are renting the lot your home is on, your rent may be subject to increase.

_____

initials

LOCAL RESTRICTIONS AND REQUIREMENTS (ZONING): Depending on where a home is to be located it may be subject to special local requirements, including zoning and deed restrictions. These local requirements may affect where the home can be placed and may also involve other related requirements (and expenses) such as size requirements, construction requirements. Contact the local municipality, county, and subdivision manager to find out what, if any, requirements of this sort may apply to any site where you are going to place a manufactured home.

_____

initials

SITE PREPARATION: The installer is responsible for proper preparation of the site where a new manufactured home is to be installed. A consumer is responsible for proper preparation of the site where a used manufactured home is to be installed. If you do not think you can prepare your site properly, consider hiring someone else with the right experience and equipment to do it for you. Proper site preparation includes a site for placement of the home that has good drainage so that water will not collect or run under or around the home; and firm compacted soil with no stumps, debris, or other matter. The site that is selected and prepared also needs to meet any setback or other placement requirements and have access to any required water, septic system, and utilities.

PROPER SITE PREPARATION IS ESSENTIAL!

_____

initials

INSTALLATION: If you are purchasing a NEW manufactured home. Installation must be included. If you are purchasing a USED manufactured home, installation may or may not be included. If installation is not included and you arrange for it yourself, remember, ONLY A LICENSED INSTALLER may install a manufactured home. The installer who actually installs the home must also provide a warranty.

PROPER INSTALLATION BY A LICENSED INSTALLER IS REQUIRED BY LAW IN ORDER FOR A HOME TO BE OCCUPIED.

If you are buying a home that has already been installed, you should ask the selling retailer if they will check the leveling, check for the presence (if required) and condition of any vapor retarder, check anything else regarding the foundation/stabilization system, or provide any other installation-related services.

If you acquire a used manufactured home that is already installed in a Wind Zone II county but the home is a Wind Zone I home, which means that home was not designed or constructed to withstand a hurricane force wind occurring in a Wind Zone II or III area, the home cannot be installed in a Wind Zone II area unless it was constructed before September 1, 1997.

_____

initials

UPKEEP AND MAINTENANCE: ANY home requires regular upkeep and maintenance – things like periodic checking of and repairs to the roof, keeping vents and filters clear, maintaining septic systems and wells in safe and sanitary working order, caulking to prevent leaks, and periodic painting. Also, depending on the foundation system you choose, a manufactured home may require periodic checking to be sure that it is still level and that the anchors and straps are secure.

_____

initials

FOUNDATION MAINTENANCE: You must accept all responsibility for maintenance of the site upon closing. These responsibilities include: maintaining good drainage around the home, preventing soil erosion, periodic inspections of foundation supports and anchorage, and any leveling or adjustment that may be required unless contractually agreed otherwise. Homes located in areas that have soils with high clay content that expands and contracts must maintain consistent moisture levels. This may include watering around the foundation during dry summer months and managing the size and proximity of the vegetation near the foundation.

_____

initials

LOT RENT: If you rent the lot your home is on, in addition to the possibility of rent increases, it is possible that the property owner could decide to change the use of the land and not renew your lease. Although you would be given advance notice, this would mean that you would have to move your home and have it installed somewhere else.

_____

initials

WATER AND UTILITIES: Be sure that your lot has access to water. If you must drill a well, consider contacting several drillers for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system. Be sure that any utilities you will need are available at your site and, if they are not, find out what will be involved in getting them delivered and connected.

_____

initials

SEWER CONNECTIONS OR SEPTIC SYSTEMS: If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support a septic system. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.

_____

initials

HOMEOWNERS ASSOCIATIONS AND FEES: Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.

_____

initials

PROPERTY TAXES: Manufactured homes are appraised and subject to property taxes. Depending on the type of loan you have, your lender may escrow for these taxes, and this will increase your monthly payments. Whether you select personal property or real property status for your home may impact any homestead exemption that you may obtain to reduce your tax liability. Talk with the county tax office if you have any questions. Failing to pay your taxes or make arrangements with the tax assessor-collector may place you at risk of having tax liens recorded on your home and, possibly, having the home foreclosed for non-payment of taxes. If you do not have a lender that escrows for the taxes, the tax assessor-collector will work out an escrow arrangement with you if requested.

_____

initials

INSURANCE: Your lender will almost certainly require you to obtain insurance. You should request quotes from the agent of your choice to obtain the insurance. Even if you do not have a lender, it is a good idea to obtain insurance to protect your home and yourself.

_____

initials

THE TEXAS MANUFACTURED HOMEOWNERS' RECOVERY TRUST FUND (the "FUND"): The Fund is established by law to protect consumers who incur certain actual damages arising from specified violations of law involving acts or omissions of licensees. To learn more about the Fund you can check the Department's website at: www.tdhca.state.tx.us/mh or call the Department for a printed description of the Fund and how it works. Claims on the Fund must be verified and must be made within two years from the date of the act or omission or when it was discovered or reasonably should have been discovered.

_____

initials

RIGHT OF RESCISSION: Once you enter into a contract with a selling retailer to acquire a manufactured home, you have a right to rescind the contract. You may, not later than the third day after the applicable contract is signed, rescind the contract without penalty or charge. The right to rescind may be modified or waived only if you have a *bona fide* emergency. The Department has rules about the detailed requirements for waivers and modifications. If you grant someone other than the retailer a lien on the home you are buying, the right of rescission automatically goes away when the lien is recorded with the TDHCA.

_____

initials

This **Six Page Disclosure** was provided to me/us by the retailer and/or lender shown below on this date. It was provided to me/us before I/we completed a credit application (if a financed transaction), or before I/we signed a contract to purchase, exchange, or lease-purchase a manufactured home.

DATE

RETAILER or LENDER

LICENSE NUMBER (if a retailer)

CUSTOMER signature

CUSTOMER printed name

Date:

CUSTOMER signature

CUSTOMER printed name

Date:

Figure: 10 TAC §80.100(b)(16)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

NOTICE OF INSTALLATION (FORM T)

Manufacturer Name:					
Model:		Date of Manufacture:			
	Label/Seal Number		Complete Serial Number		Width X Length
Section One:					
Section Two:					
Section Three:					
Consumer Name					
Home Phone:		Work/Cell Phone:			
Physical Address		**Mailing** Address			
City/State/Zip		City/State/Zip			
County Where Home Installed:		Installation Date:			
Wind Zone: ☐ I ☐ II ☐ III		Is the home installed in a Humid & Fringe Climate? ☐ Yes ☐ No			
Is this only a releveling? ☐ Yes ☐ No		Was the home labeled for alternate construction? ☐ Yes ☐ No			

	Name	Address	License #	Expiration Date	Phone #
Retailer					
Installer					

Is home installed in Frost Line Zone? ☐ Yes ☐ No

Does retailer or installer provide skirting? ☐ Yes ☐ No

Is installation part of sales contract of used home? ☐ Yes ☐ No ☐ Not Applicable

New Home - The home has been installed in accordance with:

☐ 1. Manufacturer's Home Installation Instructions (provide page number or option _____).

☐ 2. A Special Foundation System *(attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).*

Used Home:

☐ 1. Manufacturer's Home Installation Instructions (provide page number or option

☐ 2. State Generic Standards - Title 10 Texas Administrative Code (10 TAC) §§80.22, 80.23, 80.24, and 80.25.

☐ 3. A stabilization system registered with the Department in accordance with 10 TAC §80.26 - *provide name of system or reference to MHD Approval Letter or registration*_____.

☐ 4. A Special Foundation System *(attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).*

FOR USED HOMES, IF NO METHOD IS CHECKED, IT WILL BE PRESUMED THAT OPTION 2 (STATE GENERIC STANDARDS) WAS USED.

The Installation Report (Form T) shall be submitted to the Department along with the required fee no later than the 7th day after which the installation is completed and should not be submitted with the title documents.

TEX. OCC. CODE~~Per~~ §1201.206(i): On secondary moves the notice must be accompanied by either the original notice of installation or a certification that a true and correct copy of the notice of installation has been provided to the chief appraiser of the county where the home is installed. The delivery of the copy of the notice to the chief appraiser may be accomplished by either certified mail or by electronic mailing of the electronically reproduced document in a commonly readable format.

I verify that I am a licensed installer, that I am responsible for the installation described, and that the information supplied is true and correct. Executed this_____ day of _____,_____.

_____ _____

Signature (Retailer/Installer) Name (print or type)

Department Use Only

☐ Inspected Without Violations	☐ Not Inspected, Unable to Locate
☐ Inspected With Violations	☐ Not Inspected, No Unit At Location
☐ Not Inspected, Unit Skirted	☐ Not Inspected, Unit Not Accessible

Inspection Date: _____ HUD/Seal #: _____

I hereby certify on this _____ day of _____, 20_____ that the above inspection results are true and correct to the best of my knowledge and belief.

Inspector Signature: _____ Printed Name: _____

DRAW MAP BELOW

Figure: 10 TAC §80.100(b)(19)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109 ~~(512) 475-3506~~
Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR STATEMENT OF OWNERSHIP AND LOCATION

The filing of an application for the issuance of a Statement of Ownership and Location, later than sixty (60) days after the date of a sale to a consumer for residential use, may result in a fee of up to one hundred dollars ($100). Any such application that is submitted late may be delayed until the fee is paid in full.

BLOCK 1: Transaction Identification

Type of Transaction		Regular or Priority Handling	(For Department Use Only) Coding:
Personal Property Transaction	**Real Property Transaction**	☐ **Regular Handling**	
☐ New	☐ New	Completed applications will be processed within 15 working days from date received.	
☐ Used	☐ Used		Lien on file: Y / N
☐ Lien Assignment	☐ **Update SOL**	☐ **Priority Handling Requested**	Lienholder Code
☐ Other:_____	☐ **Other**	An additional $55 **fee** is included with payment to review application within 5 working days from date received.	County Code:
			Right of Surv.: Y / N
			~~R #:~~ ~~M GF#:~~

BLOCK 2(a): Home Information (required)

Manufacturer Name:		Model:	
Address:		Date of Manufacture:	
City, State, Zip:		Total Square Feet:	
License Number:		Wind Zone:	

	Label/Seal Number	*Complete Serial Number*	*Weight*	*Size**	**NOTE: Size must be reported as the outside dimensions (length and width) of the home as measured to the nearest ½ foot at the base of the home, exclusive of the tongue or other towing device.*
Section 1:				X	
Section 2:				X	
Section 3:				X	
Section 4:				X	

2(b) Is home being sold? ☐ No ☐ Yes
If yes, and **if there is/are no HUD Label(s) or Texas Seal**(s) on your home, a Texas Seal will need to be purchased and will be issued to each section of your home at an **additional cost** of $35.00 per section.
Indicate which section(s) needs a Texas Seal(s): _____ *(Single - $35 Double - $70 Triple - $105)*

BLOCK 3: Home Location (required)

Physical Location of Home: *(or 911 address)*

Physical Address (cannot be a Rt. or P. O. Box) *City* *State* *ZIP* *County*

Was home moved for this sale? ☐ No ☐ Yes If yes, include a copy of moving permit.
Was Home Installed for this sale? ☐ No ☐ Yes If yes, provide installer information below, if known

Installer Name, address and phone:

BLOCK 4: Ownership Information (required)

4(a) Seller(s) or Transferor(s)		4(b) Purchaser(s), Transferee(s), or Owner(s)	
Name	License # if Retailer:	Name	License # if Retailer:
Name		Name	
Mailing Address		Mailing Address	
City/State/Zip		City/State/Zip	
Daytime Phone Number ( ) -		Daytime Phone Number ( ) -	

4(c) Date of sale, transfer or ownership change:

4(d) Did the buyer trade-in a home to purchase this home? ☐ No ☐ Yes If yes, the application transferring the ownership to the Retailer must be attached to this application. Provide the following information on the home traded in:

HUD Label _____, Serial No. _____

HUD Label #:	Serial #:	GF# (for title co.):

BLOCK 5: Right of Survivorship (if no box is checked, joint owners will NOT have right of survivorship)

If joint owners desire right of survivorship, check the applicable box below:

☐ Husband and wife will be the only owners and agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner.

☐ Joint owners are other than husband and wife, desire right of survivorship, **and** have attached a completed Affidavit of Fact for Right of Survivorship or other affidavits as necessary to meet the requirements of §1201.213 of the Standards Act.

BLOCK 6: Personal/Real Property Election - Purchaser(s)/Transferee(s)/Owner(s) check one election type

☐ Personal Property – Applicant elects to treat this home as personal property. All documents affecting title to the home will be filed in the records of the Department.

☐ Real Property – I (we) elect to treat this home as real property as ~~and certify that I am (we are) entitled to make this election in accordance with Section 1201.2055 of the Occupations Code because~~ (**one** box **must** be checked):

☐ I (we) own the real property that the home is attached to. ☐ I (we) have a qualifying long-term lease for the land that the home is attached to.

☐ The applicant or their authorized representative is the holder or servicer of the loan.

I (We) understand that the home will not be considered to be real property until a certified copy of the SOL has been filed in the real property records of the county in which the home is located AND a copy stamped "Filed" has been submitted to the Department.

Legal description ~~must be provided~~ for real property is attached (Example: Deed, title policy, or title commitment). ~~:~~ _____

_____

_____

If a title company, list your file or GF #: _____

☐ **Inventory** – ***(FOR RETAILER USE ONLY)*** Retailer number must be provided in Block 4b if this election is checked.

BLOCK 7: To Designate a Home as Non-Residential (Business Use) or Salvage ~~Designated Use - to be designated by purchaser(s), transferee(s), or owner(s)~~

☐ ~~**Residential Use (as a dwelling) OR**~~

☐ **Home WILL NOT be used for residential use. Home is designated as:~~Non-Residential - Check one of the following:~~**

☐ *Business Use* **(means use other than a residential dwelling, such as storage)**

☐ *Salvage* **(means scrapped, dismantled, or which the full insured value has been paid by an insurance company). A salvaged home may only be sold to or rebuilt by a licensed Retailer (subject to inspection and approval prior to construction).**

BLOCK 8(a): Liens – Will there be any liens on the home (other than a tax lien)? ☐ No ☐ Yes If yes, complete the below lien information.

Block 8(b): Lien Information

Date of First Lien:		Date of Second Lien:	
Name of First Lienholder:		Name of Second Lienholder:	
Mailing Address:		Mailing Address:	
City/State/Zip:		City/State/Zip:	
Daytime Phone:		Daytime Phone:	

BLOCK 9: Special Mailing Instructions

IF a copy of an SOL is to be mailed to anyone other than the owner or lienholder of record (such as a closing agent), please provide that mailing address here.	Name:	
	Company:	
	Street Address:	
	City, State, Zip:	
	Area Code/Phone	

BLOCK 10: Signatures Required (Notarization is Optional)

10(a) Signatures of each seller/transferor	10(b) Signatures of each purchaser/transferee or owner
_____ *Signature of owner or authorized seller* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*	_____ *Signature of purchaser/transferee or owner* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*
_____ *Signature of owner or authorized seller* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*	_____ *Signature of purchaser/transferee or owner* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*

10(c) For Lien Assignments Only	
_____ *Signature of authorized representative for previous lienholder*	_____ *Signature of authorized representative for new lender*

Figure: 10 TAC §80.100(b)(25)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

RELEASE OR FORECLOSURE OF LIEN

(This form is not to be used for tax liens. Please type or print clearly.)

FORM B

BLOCK 1: Home Information (Must be completed)

Manufacturer Name:		License #:	
Manufacturer Address:			
Model :	Total Sq. Ft.:	Date of Manufacture:	

Label/Seal Number	Complete Serial Number	Weight	Size
Section One:			
Section Two:			
Section Three:			

BLOCK 2: Lienholder and Borrower Information ~~For Release of Liens~~

(Name of Lienholder)	*(Address)*	*(City)*	*(State)*	*(Zip)*	*(Phone)*
(Name of Consumer)	*(Address)*	*(City)*	*(State)*	*(Zip)*	*(Phone)*

BLOCK 3: For Release of Lien

Release of Lien Effective Date:

BLOCK 4(a)~~3~~: ~~For~~ Foreclosure of Lien Information

Date of Repossession: _____ Release of Lien Effective Date:_____

***Method** of Repossession (MUST CHECK ONE):*

( ) Terms of Security (Lien) Agreement

( ) Judicial Order (Sequestration, Possessory Lien, etc.) If by judicial order, attach a copy of the Sheriff's Bill of Sale. If the lien was not recorded on the document of title, a COPY of the Security Agreement or Judicial Order must be attached.

BLOCK 4~~(b)~~: Sale of Foreclosed Manufactured Home

MUST be completed IF foreclosure is being recorded

***Method** of Sale (MUST CHECK ONE):*

( ) I (We) will sell the home to or through a licensed retailer.

( ) I (We) will sell the home directly to a consumer and have the required retailer license.

( ) I (We) will sell the home directly to a consumer and I am (We are) not required to be licensed as a retailer under Subchapter C of the Standards Act.

If either of the first two items above is checked and this form is submitted in conjunction with an application to record the sale of the manufactured home, the name and license number of the retailer must be provided here: R-_____.

BLOCK 5: Notarized Signature Required

I (We) certify that the statements set forth hereinabove and the information attached hereto are true and correct.

_____
(Signature of Person Authorized to Sign for Lienholder)

(Title of Person Signing) *(Phone)*

Sworn and subscribed before me this _____ day of _____, 20_____
(month) *(year)*

_____
(Signature of Notary)

_____ *Seal* _____
(Typed Name of Notary) *(Date Commission Expires)*

DRAFT Form: Release or Foreclosure of Lien (Form B)

Figure: 10 TAC §80.100(b)(35)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489

(877) 313-3023 ~~(800) 500-7074~~, (512) 475-2200 FAX (512) 475-3506

Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR LICENSE RENEWAL (OTHER THAN SALESPERSONS)

Renew your license in one of 3 ways:

- **NEW! Renew online using a credit card or electronic check.** For eligibility requirements and other information, visit us on the web at www.tdhca.state.tx.us/mh/industry-info.htm. Please help us improve by completing the survey afterward.
- Complete this application and mail it with the renewal fee and proof that you completed the continuing education to: TDHCA/MHD, P.O. Box 12489, Austin, Texas 78711-2489
- Deliver in person this completed application with the fee to 1106 Clayton Lane, Suite 270W, Austin, Texas 78723

BLOCK 1: Applicant Information *(Please type or print clearly.)*

License Number: _____ Current Business Name: _____

Expiration Date: ~~/ /~~ Current Mailing Address: _____

City/State/ZIP: _____

Has there been a business name change that you have not yet reported to TDHCA? [ ] Yes [ ] No
If yes, you must submit acceptable evidence that your bond covers the changes.

Has there been any change in location that you have not yet reported to TDHCA? [ ] Yes [ ] No
If yes, you must submit acceptable evidence that your bond covers the changes.

Has there been any change in corporate officers that you have not yet reported to TDHCA? [ ] Yes [ ] No
If yes, please list name(s) and date(s) of birth on the back of this page.

A CRIMINAL BACKGROUND CHECK WILL BE RUN. Have you, a corporate officer, or a partner, ever acquired a criminal record, which may consist of conviction, deferred adjudication, plead guilty, or nolo contendere, for any felony or misdemeanor offense, other than a Class C Misdemeanor for traffic violations, within the last 24 months preceding this application? ~~Have you, or a corporate officer or partner, been convicted in Texas or any other state of any felony or misdemeanor offense, other than a class c misdemeanor for a traffic violation, in the last 24 months?~~ [ ] Yes [ ] No
If yes, please visit our website or contact our office to obtain a *Criminal Record ~~Conviction~~ Affidavit,* which you must complete and submit with this application. If a criminal record is identified within the last 24 months and the applicant checked "no" the license may be denied.

Have you completed the requirements for continuing education? [ ] Yes [ ] No
If yes, please attach the class certificate.

Are you in arrears on any taxes owed the State of Texas? [ ] Yes [ ] No
If you answered YES, provide proof that you are in good standing or that you have made payment arrangements. If not in good standing ~~yes~~, please call Tax Assistance at (512) 463-4600 or 1-800-252-5555.

Are you in arrears on a guaranteed student loan? [ ] Yes [ ] No
If you answered YES, provide proof that you are in good standing or that you have made payment arrangements. If not in good standing ~~yes~~ please call the Guaranteed Student Loan Corporation at (512) 835-1900.

Are you in arrears of any child support required by the family code? [ ] Yes [ ] No
If yes, please call the Office of Attorney General's Child Support Division at (800) 252-8014.

Attach a list of all related persons to this application as required by TEX. OCC. CODE §1201.103 of the Standards Act.

BLOCK 2: License Type and Fees

Please check one:				
	[ ] Retailer (R)	$550	[ ] Retailer/Installer (RI)	$900
	[ ] Broker (B)	$350	[ ] Retailer/Broker/Installer (RBI)	$1250
	[ ] Installer (I)	$350	[ ] Salvage Rebuilder (S)	$550
	[ ] Retailer/Broker (RB)	$900	[ ] Manufacturer (M)	$850

BLOCK 3: Certification			
With knowledge of the penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.			
_____ Printed Name and Title	(___)_____ Phone Number	_____ Signature of Owner or Corporate Officer	_____ Date

Department Use Only:	[ ] License Renewal Fee Received	Date Received: / /

Figure: 10 TAC §80.100(b)(38)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

PROVISIONAL INSTALLATION

NOTICE OF INSTALLATION (FORM T)

You may fax or email this report within 3 working days from the date of installation to your assigned field office.
Mail the original and fee by regular mail to the address

Manufacturer Name:			
Model:		Model:	
		Label/Seal Number	
Section One:		Section One:	
Section Two:		Section Two:	
Section Three:		Section Three:	
Consumer Name:			
Home Phone:		Home Phone:	
Physical Address:		**Physical** Address:	
City/State/Zip:		City/State/Zip:	
County Where Home is Installed:		County Where Home is Installed:	
Wind Zone: ☐ I ☐ II ☐ III		Wind Zone:	
Is this only a releveling? ☐ Yes ☐ No		Was the home labeled for alternate construction? ☐ Yes ☐ No	

	Name		Name		Name
Retailer		**Retailer**		**Retailer**	
Installer		**Installer**		**Installer**	

Is home installed in Frost Line Zone? ☐ Yes ☐ No

Does retailer or installer provide skirting? ☐ Yes ☐ No

Is installation part of sales contract of used home? ☐ Yes ☐ No ☐ Not Applicable

New Home - The home has been installed in accordance with:

☐ 1. Manufacturer's Home Installation Instructions (provide page number or option _____).

☐ 2. A Special Foundation System *(attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).*

Used Home:

☐ 1. Manufacturer's Home Installation Instructions (provide page number or option _____).

☐ 2. State Generic Standards - Title 10 Texas Administrative Code (10 TAC) §§80.22, 80.23, 80.24, and 80.25.

☐ 3. A stabilization system registered with the Department in accordance with 10 TAC §80.26 - *provide name of system or reference to MHD Approval Letter or registration*_____.

☐ 4. A Special Foundation System *(attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).*

FOR USED HOMES, IF NO METHOD IS CHECKED, IT WILL BE PRESUMED THAT OPTION 2 (STATE GENERIC STANDARDS) WAS USED.

NOTICE OF INSTALLATION (FORM T)

The Installation Report (Form T) shall be submitted to the Department along with the required fee no later than the 3rd day after which the installation is completed and should not be submitted with the title documents.

TEX. OCC. CODE ~~Per~~ §1201.206(i): On secondary moves the notice must be accompanied by either the original notice of installation or a certification that a true and correct copy of the notice of installation has been provided to the chief appraiser of the county where the home is installed. The delivery of the copy of the notice to the chief appraiser may be accomplished by either certified mail or by electronic mailing of the electronically reproduced document in a commonly readable format.

I verify that I am a licensed installer, that I am responsible for the installation described, and that the information supplied is true and correct. Executed this_____ day of _____,_____.

_____ Signature (Retailer/Installer)

_____ Name (print or type)

NOTE: A minimum of five (5) provisional installations must be inspected without violations for a provisional installer's license to become a full installer's license.

Department Use Only

☐ Inspected Without Violations	☐ Not Inspected, Unable to Locate
☐ Inspected With Violations	☐ Not Inspected, No Unit At Location
☐ Not Inspected, Unit Skirted	☐ Not Inspected, Unit Not Accessible

Inspection Date: _____ HUD/Seal #: _____

I hereby certify on this _____ day of _____, 20_____ that the above inspection results are true and correct to the best of my knowledge and belief.

Inspector Signature: _____ Printed Name: _____

DRAW MAP BELOW

Figure: 10 TAC §80.100(b)(42)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489

(877) 313-3023 ~~(800) 500-7074~~, (512) 475-2200 FAX (512) 475-3506

Internet Address: www.tdhca.state.tx.us/mh/index.htm

SALESPERSON'S APPLICATION FOR LICENSE RENEWAL

Renew your license in one of 3 ways:

- Renew online using a credit card or electronic check. For eligibility requirements and other information, visit us on the web at www.tdhca.state.tx.us/mh/industry-info.htm. Please help us improve by completing the survey afterward.
- Complete this application and mail it with the renewal fee to: TDHCA/MHD, P.O. Box 12489, Austin, Texas 78711-2489
- Deliver in person this completed application with the fee to 1106 Clayton Lane, Suite 270W, Austin, Texas 78723

Type	Renewal Fee	1 to 90 days late (1 ½ times the renewal)	90 to 364 days late (2 times the renewal fee)
Salesperson	$200	$300	$400

BLOCK 1: Salesperson Information *(Please type or print clearly.)*

License Number: _____ Expiration Date: ___/___/___

Name: _____

Current Mailing Address: _____

City/State/ZIP: _____

Home Phone: _____

Work Phone: _____

Social Security # (Required): _____

A CRIMINAL BACKGROUND CHECK WILL BE RUN. Have you, a corporate officer, or a partner, ever acquired a criminal record, which may consist of conviction, deferred adjudication, plead guilty, or nolo contendere, for any felony or misdemeanor offense, other than a Class C Misdemeanor for traffic violations, within the last 24 months preceding this application? ~~Have you been convicted in Texas or any other state of a felony or misdemeanor offense, other than a Class C misdemeanor for a traffic violation, in the last 24 months?~~ [ ] Yes [ ] No

If yes, please visit our website or contact our office to obtain a *Criminal Record ~~Conviction~~ Affidavit*, which you must complete and submit with this application. If a criminal record is identified within the last 24 months and the applicant checked "no" the license may be denied.

Have you completed the requirements for continuing education? [ ] Yes [ ] No
If yes, please attach the class certificate.

Are you in arrears on any taxes owed the State of Texas? [ ] Yes [ ] No
If you answered YES, provide proof that you are in good standing or that you have made payment arrangements. If not in good standing, please call Tax Assistance at (512) 463-4600 or 1-800-252-5555.

Are you in arrears on a guaranteed student loan? [ ] Yes [ ] No
If you answered YES, provide proof that you are in good standing or that you have made payment arrangements. If not in good standing please call the Guaranteed Student Loan Corporation at (512) 835-1900.

Are you in arrears of any child support required by the family code? [ ] Yes [ ] No
If yes, please call the Office of Attorney General's Child Support Division at (800) 252-8014.

BLOCK 2: Employer Information	
Name of Sponsoring Retailer or Broker:	
Sponsoring Retailer's or Broker's Address:	
City/State/ZIP:	
Sponsoring Retailer's or Broker's License#:	

BLOCK 3: Certification

License is subject to revocation, if the Department is **NOT** notified in writing of any changes in the information given on this application or if there is a violation of the law. Evidence that the continuing education requirements of **TEX. OCC. CODE** §1201.113 have been completed must be received by the Department before the license can be renewed.

With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.

(Signature of Applicant)	*(Date)*	*(Signature of Sponsoring Retailer or Broker)*	*(Date)*

Department Use Only:	[ ] License Renewal Fee Received	Date Received:	/ /

Figure: 10 TAC §80.100(b)(47)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489

(800) 500-7074, (512) 475-2200 FAX (512) 475-1109

Internet Address: www.tdhca.state.tx.us/mh/index.htm

FIELD VERIFICATION INSPECTION REQUEST FORM

BLOCK 1: Inspection Requested By *(Required)*:

Name:			
Address:			
City/State/ZIP:			
Email:			
Phone:		Fax:	

BLOCK 2: Site Information *(Required)*:

Physical Address:	
City/State/ZIP:	
County:	
Directions *(if necessary)*:	
Type of Verification Needed:	☐ HUD Label Number ☐ Make/Model ☐ Physical Address ☐ Occupied By Resident ☐ Serial Number ☐ Size ☐ Type of home(s) on site (HUD Code, modular, or site built)

BLOCK 3: Inspection Findings (Department Use Only)

Internal File Number Assigned By Austin:

Manufacturer Name:		Model:	
Address:		Date of Manufacturer:	
City, State, Zip:		Total Square Feet:	
License Number:		Wind Zone:	

	Label/Seal Number	*Complete Serial Number*	*Size*	*Type of Improvement:*
Section 1:			X	☐ HUD Code ☐ Modular ☐ Site Built
Section 2:			X	
Section 3:			X	
Section 4:			X	

Inspector's Comments (if applicable):

Printed Name of Inspector | *Signature of Inspector* | *Date*

DRAFT Form: Field Verification Inspection Request Form

Figure: 10 TAC §80.100(b)(48)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
877-313-3023, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

Adding or Deleting a Related Person to a License Record

ADD A RELATED PERSON

List any person(s) who meet the definition of a related person who is/are hereby authorized to be listed as such on the license record. A date of birth and social security number is needed for a criminal background check.

Full Name	*Date of Birth*	*Social Security Number (Required)*
Full Name	*Date of Birth*	*Social Security Number (Required)*

DELETE A RELATED PERSON

List any person(s) no longer authorized to be listed as a related person, and should be removed from the license record.

Full Name	*Date of Birth*
Full Name	*Date of Birth*

CERTIFICATION

I am authorized to make the above mentioned changes and attest that all statements made are true and correct.

Printed Name of License Holder	*Title*
Signature	*License Number (Example R-1234, I-1234, M-1234)*

This form can be emailed or faxed to:

Email: licensing@tdhca.state.tx.us

Fax: 512-475-3506

Figure: 16 TAC §401.305(c)(8)

Grand/Jackpot Payment Options - Terminal Functionality

Currently Deployed (Old) Terminals

Terminal Type	Manual Entry	Playslip with No Payment Option Selected
ISYS (Retailer Terminal)	Default to Annuity; retailer toggles to choose Cash Value Option (CVO).	Terminal will default to Annuity and send the wager request for all playslips unless Multi-draw option is selected. Multi-draw option will result in the Confirmation screen showing the payment option.
GVTX/GVT2X (Retailer Terminal)	Retailer chooses between Annuity and CVO from menu options. No default.	Not Applicable.
SST (Self-service Terminal)	CVO only - designated on terminal Home Screen.	Terminal will default to Annuity and display this option on the Ticket Builder screen. Player must press "PRINT MY TICKET" to complete the transaction. If Annuity is not the desired payment option, player has the opportunity to cancel the transaction and process a revised playslip.
GamePoint (Self-service Terminal)	CVO only - designated on terminal Home Screen.	Terminal will default to Annuity and display this option on the Ticket Builder screen. Player must press "PRINT MY TICKET" to complete the transaction. If Annuity is not the desired payment option, player has the opportunity to cancel the transaction and process a revised playslip.

Conversion (New) Terminals

Terminal Type	Manual Entry	Playslip with No Payment Option Selected
GT1200 (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity	Playslip Rejected with message "Playslip Rejected. Check Payment Option."
GT1200C (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity.	Playslip Rejected with message "Playslip Rejected. Check Payment Option."
GT Mini (Retailer Terminal)	Retailer chooses between Annuity and CVO from menu options. No default.	Not Applicable.
Gemini (Self-service Terminal)	CVO only - designated on on-line game Quick Pick buttons.	Playslip Rejected with message "Playslip Rejected. Check Payment Option."

Figure: 16 TAC §401.315(b)(4)

Grand/Jackpot Prize Payment Options - Terminal Functionality

Currently Deployed (Old) Terminals

Terminal Type	Manual Entry	Playslip with No Payment Option Selected
ISYS (Retailer Terminal)	Default to Annuity; retailer toggles to choose Cash Value Option (CVO).	Terminal will default to Annuity and send the wager request for all playslips unless Multi-draw option is selected. Multi-draw option will result in the Confirmation screen showing the payment option.
GVTX/GVT2X (Retailer Terminal)	Retailer chooses between Annuity and CVO from menu options. No default.	Not Applicable.
SST (Self-service Terminal)	CVO only - designated on terminal Home Screen.	Terminal will default to Annuity and display this option on the Ticket Builder screen. Player must press "PRINT MY TICKET" to complete the transaction. If Annuity is not the desired payment option, player has the opportunity to cancel the transaction and process a revised playslip.
GamePoint (Self-service Terminal)	CVO only - designated on terminal Home Screen.	Terminal will default to Annuity and display this option on the Ticket Builder screen. Player must press "PRINT MY TICKET" to complete the transaction. If Annuity is not the desired payment option, player has the opportunity to cancel the transaction and process a revised playslip.

Conversion (New) Terminals

Terminal Type	Manual Entry	Playslip with No Payment Option Selected
GT1200 (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity	Playslip Rejected with message "Playslip Rejected. Check Payment Option."
GT1200C (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity.	Playslip Rejected with message "Playslip Rejected. Check Payment Option."
GT Mini (Retailer Terminal)	Retailer chooses between Annuity and CVO from menu options. No default.	Not Applicable.
Gemini (Self-service Terminal)	CVO only - designated on on-line game Quick Pick buttons.	Playslip Rejected with message "Playslip Rejected. Check Payment Option."

Figure: 16 TAC §401.317(f)(1)(A)

Grand/Jackpot Payment Options - Terminal Functionality

Currently Deployed (Old) Terminals

Terminal Type	Manual Entry	Playslip with No Payment Option Selected
ISYS (Retailer Terminal)	Default to Annuity; retailer toggles to choose Cash Value Option (CVO).	Terminal will default to Annuity and send the wager request for all playslips unless Multi-draw option is selected. Multi-draw option will result in the Confirmation screen showing the payment option.
GVTX/GVT2X (Retailer Terminal)	Retailer chooses between Annuity and CVO from menu options. No default.	Not Applicable.
SST (Self-service Terminal)	CVO only - designated on terminal Home Screen.	Terminal will default to Annuity and display this option on the Ticket Builder screen. Player must press "PRINT MY TICKET" to complete the transaction. If Annuity is not the desired payment option, player has the opportunity to cancel the transaction and process a revised playslip.
GamePoint (Self-service Terminal)	CVO only - designated on terminal Home Screen.	Terminal will default to Annuity and display this option on the Ticket Builder screen. Player must press "PRINT MY TICKET" to complete the transaction. If Annuity is not the desired payment option, player has the opportunity to cancel the transaction and process a revised playslip.

Conversion (New) Terminals

Terminal Type	Manual Entry	Playslip with no Payment Option Selected
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GT Mini (Retailer Terminal)	Retailer chooses between Annuity and CVO from menu options. No default.	Not Applicable.
Gemini (Self-service Terminal)	CVO only - designated on on-line game Quick Pick buttons.	Playslip Rejected with message "Playslip Rejected. Check Payment Option."

Figure: 16 TAC §402.205(p)

If	Then
Bingo Cards/Paper	Organization transferring from, organization transferring to, series number, serial number, #on/#up, total number of sets/sheets transferred, signature of an officer, director or the primary operator.
Bingo Equipment	Organization transferring from, organization transferring to, equipment type, manufacturer, model and/or serial number, signature of an officer, director or the primary operator.
Instant Bingo Tickets	Organization transferring from, organization transferring to, form number, name of game, series number, total number of instant bingo tickets transferred, signature of an officer, director or the primary operator.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Assistive and Rehabilitative Services

Notice of Public Hearing

Early Childhood Intervention (ECI) provides comprehensive early intervention services to families with infants and toddlers who have developmental delays, have diagnosed physical or mental conditions with a high probability of developmental delay, or exhibit atypical development. Early intervention services are provided as required by the Individuals with Disabilities Education Act (IDEA), Part C as Amended in 2004.

ECI is soliciting public comments on proposed amendments, new rules, and repeals to:

Texas Administrative Code, Part 2, Chapter 108, Division for Early Childhood Intervention Services, Subchapter D, Case Management For Infants and Toddlers With Developmental Disabilities, and Subchapter E, Specialized Skills Training

The proposed revisions to Title 40, Texas Administrative Code, Part 2, Chapter 108, Division for Early Childhood Intervention Services are available for viewing on the Texas Department of Assistive and Rehabilitative Services Web site at www.dars.state.tx.us/ and will be published in the *Texas Register* at www.sos.state.tx.us/texreg/ on approximately February 25, 2011.

ECI will host public hearings around the state to collect testimony and respond to comments. Public hearings will be held according to the following schedule, and each of these hearings will be held from 4:00 p.m. to 7:00 p.m.

March 8, 2011

Region 20 Education Service Center

1314 Hines Avenue

San Antonio, Texas 78208

March 10, 2011

John H. Winters Building

701 W 51st Street

Austin, Texas 78751

Written comments or requests for copies of the draft proposal may be submitted to ECI.policy@dars.state.tx.us or mailed to:

Texas Department of Assistive and Rehabilitative Services

Division for Early Childhood Intervention Services

4900 North Lamar Boulevard

Austin, Texas 78751-2399

For persons with disabilities requesting accommodations, please contact DARS Inquiries at 1-800-628-5115 TDD/TTY 1-866-581-9328 preferably 72 hours before the scheduled meeting.

TRD-201100335

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Filed: January 26, 2011

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - November 2010

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period November 2010, as required by Tax Code, §202.058, is $62.80 per barrel for the three-month period beginning on August 1, 2010, and ending October 31, 2010. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of November 2010, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period November 2010, as required by Tax Code, §201.059, is $3.07 per mcf for the three-month period beginning on August 1, 2010, and ending October 31, 2010. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of November 2010, from a qualified Low-Producing Well, is eligible for 25% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of November 2010, is $84.31 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of November 2010, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of November 2010, is $4.04 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of November 2010, from a qualified low-producing gas well.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201100227

Ashley Harden

General Counsel

Comptroller of Public Accounts

Filed: January 20, 2011

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Certification of the Average Taxable Price of Gas and Oil - December 2010

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period December 2010, as required by Tax Code, §202.058, is $64.80 per barrel for the three-month period beginning on September 1, 2010, and ending November 30, 2010. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of December 2010, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period December 2010, as required by Tax Code, §201.059, is $3.02 per mcf for the three-month period beginning on September 1, 2010, and ending November 30, 2010. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of December 2010, from a qualified Low-Producing Well, is eligible for 25% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of December 2010, is $89.23 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of December 2010, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of December 2010, is $4.28 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of December 2010, from a qualified low-producing gas well.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201100312
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: January 25, 2011

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Notice of Request for Proposals

Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter B, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP #201a) from qualified, independent firms to serve as Financial Advisor to the Comptroller. The Comptroller desires to obtain the services of a Financial Advisor related to the document preparation, issuance, sale, and delivery of Tax and Revenue Anticipation Notes, including Commercial Paper Notes (Notes) as well as assistance in handling of disclosure issues relating to the Notes. The successful respondent will be expected to begin performance of the contract on or about February 26, 2011.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, February 4, 2011, after 10:00 a.m., Central Time (CT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Electronic State Business Daily at: http://esbd.cpa.state.tx.us on Friday, February 4, 2011, after 10:00 a.m., CT.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. CT on Friday, February 11, 2011. Prospective respondents are encouraged to fax or e-mail non-mandatory Letters of Intent and Questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. The Letter of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding section of the RFP and be signed by an official of that entity. On or about Monday, February 14, 2011, the Comptroller expects to post responses to questions as a revision to the Electronic State Business Daily notice on the issuance of this RFP. Respondents are solely responsible for verifying timely receipt of Questions and Non-mandatory Letters of Intent in the Issuing Office by the deadline. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered.

Closing Date: Proposals must be delivered to the Issuing Office, to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. CT, on Tuesday, February 22, 2011. Proposals received after this time and date will not be considered under any circumstances. Respondents are solely responsible for submission of Non-mandatory Letters of Intent and Questions by the deadline.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller shall make the final decision on any contract award or awards resulting from this RFP. The Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. The Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - February 4, 2011, 10:00 a.m. CT; Non-Mandatory Letter of Intent to propose and Questions Due - February 11, 2011, 2:00 p.m. CT; Official Responses to Questions posted - February 14, 2011, or as soon thereafter as practical; Proposals Due - February 22, 2011, 2:00 p.m. CT, Contract Execution - February 26, 2011, or as soon thereafter as practical; and Commencement of Project Activities - February 26, 2011.

TRD-201100322
William Clay Harris
General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 26, 2011

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Notice of Request for Proposals

Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter A, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP #201b) from qualified, independent law firms to serve as Bond Counsel to the Comptroller. The Comptroller desires to obtain the services of Bond Counsel in connection with a variety of issues related to the issuance, sale, and delivery of Tax and Revenue Anticipation Notes, including Commercial Paper Notes (Notes) as well as assisting in handling all disclosure is-

sues relating to the Notes. The successful respondent will be expected to begin performance of the contract on or about February 26, 2011.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, February 4, 2011, after 10:00 a.m., Central Time (CT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Electronic State Business Daily at: http://esbd.cpa.state.tx.us, on Friday, February 4, 2011, after 10:00 a.m., CT.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CT) on Friday, February 11, 2011. Prospective respondents are encouraged to fax or e-mail non-mandatory Letters of Intent and Questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. The Letter of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding section of the RFP and be signed by an official of that entity. On or about Monday, February 14, 2011, or as soon thereafter as practical, Comptroller expects to post official responses to questions as a revision to the Electronic State Business Daily notice of the issuance of the RFP. Respondents are solely responsible for verifying timely receipt of Questions and Non-mandatory Letters of Intent in the Issuing Office by the deadline. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered.

Closing Date: Proposals must be delivered to the Issuing Office, to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. (CT), on Tuesday, February 22, 2011. Proposals received after this time and date will not be considered under any circumstances. Respondents are solely responsible for submission of Non-mandatory Letters of Intent and Questions by the deadline.

Evaluation Criteria: Proposals will be evaluated according to the evaluation criteria outlined in the RFP. Comptroller shall make the final decision on any contract award or awards resulting from this RFP. Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - February 4, 2011, 10:00 a.m. CT; Non-Mandatory Letter of Intent to propose and Questions Due - February 11, 2011, 2:00 p.m. CT; Official Responses to Questions posted - February 14, 2011, or as soon thereafter as practical; Proposals Due - February 22, 2011, 2:00 p.m. CT, Contract Execution - February 26, 2011, or as soon thereafter as practical; and Commencement of Project Activities - February 26, 2011.

TRD-201100323
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 26, 2011

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Notice of Request for Proposals

Pursuant to §§403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 404, Subchapters G, §§404.101 - 404.106; and §404.114, Texas Government Code, the Comptroller of Public Accounts (Comptroller), as sole officer, director and shareholder of the Texas Treasury Safekeeping Trust Company (Trust Company), issues this notice of issuance of a Request for Proposals (RFP #201c) for master trust custodian services and fund administration services for the assets held by the various endowment funds (Funds) managed by the Trust Company. If a contract award is made under the terms of the RFP, the successful respondent(s) will be expected to begin performance of the contract on or about June 15, 2011, with transition complete, if necessary, and services available on or before September 1, 2011.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, February 4, 2011, after 10:00 a.m. Central Time (CT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) after 10:00 a.m. on Friday, February 4, 2011, at: http://esbd.cpa.state.tx.us.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CT) on Friday, February 18, 2011. Respondents are encouraged to fax Non-Mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. The Letter of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding section of the RFP and be signed by an official of that entity. On or before Friday, February 25, 2011, the Comptroller expects to post responses to questions as a revision to the electronic notice of the issuance of the RFP. Late Non-mandatory Letters of Intent and Questions received after the deadline will not be considered. Respondents are solely responsible for ensuring timely receipt of Questions and Letters of Intent in the Issuing Office.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (Issuing Office) no later than 2:00 p.m. (CT), on Friday, March 11, 2011. Late proposals received after this time and date will not be considered. Respondents are solely responsible for ensuring timely receipt of proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller and Trust Company will make the final decision on contract award(s), if any. The Comptroller and Trust Company each reserve the right to accept or reject any or all proposals submitted. The Comptroller and Trust Company are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and Trust Company shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - Friday, February 4, 2011, after 10:00 a.m. CT; Non-Mandatory Letters of Intent and Questions Due - February 18, 2011, 2:00 p.m. CT; Official Responses to Questions posted - February 25, 2011; Proposals Due - March 11, 2011, 2:00 p.m. CT; Contract Execution - June 15, 2011, or as soon thereafter as practical; Transition Complete and Services Available under Contract - September 1, 2011.

TRD-201100336

William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 26, 2011

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/31/11 - 02/06/11 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/37/11 - 02/06/11 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-201100306
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 24, 2011

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Education Service Center, Region 16

Notice for Region 16 Board Election

Persons interested in filing for positions on the Board of Directors of Region 16 Education Service Center, an organization that provides educational services to 63 school districts and two charter schools in the north 26 counties of the Texas Panhandle, may do so at the office of the Executive Director (5800 Bell Street, Amarillo, Texas) during regular office hours (8:00 a.m. to 5:00 p.m.) Monday through Thursday or from 8:00 a.m. to 4:00 p.m. Friday, beginning Tuesday, February 1, 2011. Deadline for filing is Monday, February 21, 2011, at 5:00 p.m.

Interested persons may file in person or, upon request, may receive a filing form by mail with the return by certified mail postmarked no later than 5:00 p.m., February 21, 2011.

Mailing address: 5800 Bell Street, Amarillo, Texas 79109-6230

Telephone: (806) 677-5015

The Board of Directors shall be elected by place. The following places (by counties) that are up for election are described as follows:

Place 4 - Counties of Hansford, Hemphill, Hutchinson, Lipscomb, Ochiltree, and Roberts

Place 5 - That part of Potter and Randall Counties included in the boundaries of the Amarillo Independent School District

To hold the office of an Education Service Center Board of Director, one must:

- Be a United States of America citizen;

- Be at least 18 years of age;

- Be a resident of the region served and of the geographic area included in the place designated outlined above.

To hold the office of Board member, one may not:

- Be engaged professionally in education;

- Be a member of a board of any educational agency or institution.

Should there be an uncontested election; the Region 16 Education Service Center Board has determined that no election will be held.

TRD-201100235
John Bass
Executive Director
Education Service Center, Region 16
Filed: January 20, 2011

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 7, 2011.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 7, 2011.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: BP Products North America, Inc.; DOCKET NUMBER: 2010-1527-IWD-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery with associated wastewater treatment; RULE VIOLATED: 30 Texas Administrative Code (TAC) §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0000443000, Effluent Limitations and Monitoring Requirements Number 1, and the Code §26.121(a)(1), by failing to prevent the unauthorized discharge of a nonpermitted wastewater source; the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of industrial waste; and 30 TAC §305.125(1), TPDES Permit Number WQ0000443000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for Outfall Numbers 001, 005, and 006; PENALTY: $242,900; ENFORCEMENT COORDINATOR: Lanae

Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: BUC-EE'S, LIMITED dba Buc-ees 16; DOCKET NUMBER: 2010-1567-PST-E; IDENTIFIER: RN102381985; LOCATION: Giddings, Lee County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the underground storage tanks (USTs); 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection; 30 TAC §334.49(b)(2) and the Code, §26.3475(d), by failing to provide corrosion protection to all underground components of an UST system; 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition; and 30 TAC §115.222(3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with control requirements for emission limitation anywhere in the liquid transfer or vapor balance system; PENALTY: $18,375; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(3) COMPANY: Carleton Construction, Limited; DOCKET NUMBER: 2011-0064-WQ-E; IDENTIFIER: RN106000078; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Curry Creek Crushing, Inc.; DOCKET NUMBER: 2010-1806-WQ-E; IDENTIFIER: RN105962781; LOCATION: Kendalia, Kendall County; TYPE OF FACILITY: rock crushing; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Custom Crushed Stone, Inc.; DOCKET NUMBER: 2010-1560-EAQ-E; IDENTIFIER: RN102769940; LOCATION: Medina County; TYPE OF FACILITY: crushed stone quarry; RULE VIOLATED: 30 TAC §213.4(a)(1) and (j)(2) and Water Pollution Abatement Plan (WPAP) Number 13-00040502 Standard Conditions (SC) Number 4, by failing to modify an existing Edwards Aquifer WPAP and obtain approval prior to initiating a regulated activity; 30 TAC §213.4(j)(6), by failing to modify an approved above ground storage tank plan; and 30 TAC §213.4(k), by failing to comply with any condition of an approved Edwards Aquifer protection plan; PENALTY: $8,250; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Tommy Chen dba Downtown Shell; DOCKET NUMBER: 2010-1461-PST-E; IDENTIFIER: RN102346251; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the UST system for releases; PENALTY: $2,550; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Enterprise Crude Pipeline, LLC; DOCKET NUMBER: 2010-1506-AIR-E; IDENTIFIER: RN1025601782; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: crude oil terminal and storage plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Air Permit Numbers 5146 and PSD-TX-N056, SC Number 13(E), Federal Operating Permit (FOP) Number O-02749, Special Terms and Conditions (STC) Number 1(A) and 9, and THSC, §382.085(b), by failing to operate the vapor control device on existing floating roof tanks; PENALTY: $8,400; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2010-1515-AIR-E; IDENTIFIER: RN102926920; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §115.722(c)(1) and §116.115(c), Air Permit 6257E, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $10,000; Supplemental Environmental Project (SEP) offset amount of $4,000 applied to Barbers Hill Independent School District - Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: FTI Industries, Inc.; DOCKET NUMBER: 2010-1855-WQ-E; IDENTIFIER: RN100769421; LOCATION: Mansfield, Johnson County; TYPE OF FACILITY: measuring and controlling devices manufacturing; RULE VIOLATED: TPDES General Permit Number TXRNEQ100, Part II, Section C.1., Conditional No Exposure Exclusion from Permit Requirements, and the Code, §26.121, by failing to isolate industrial activities and materials from storm water and storm water runoff by storm resistant shelters; PENALTY: $800; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: GE Engine Services - Dallas, L.P.; DOCKET NUMBER: 2010-1492-AIR-E; IDENTIFIER: RN101960615; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: jet engine maintenance and testing factory; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), FOP Number O-01640, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to submit an annual compliance certification (ACC); PENALTY: $2,250; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Geosource, Inc.; DOCKET NUMBER: 2010-1394-EAQ-E; IDENTIFIER: RN100847813; LOCATION: Comal and Bexar Counties; TYPE OF FACILITY: mulch and soil processing commercial business; RULE VIOLATED: 30 TAC §213.4(j)(2) and Edwards Aquifer WPAP Number 13-06030103, Standard Conditions Number 4, by failing to obtain approval for a modification of a previously approved Edwards Aquifer protection plan; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 4903096.

(12) COMPANY: GOPAL INTERNATIONAL, INC. dba Star Stop 3; DOCKET NUMBER: 2010-1657-PST-E; IDENTIFIER: RN101738235; LOCATION: Orange, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to

ensure that the USTs are monitored in a manner which will detect a release; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; and 30 TAC §334.50(d)(1)(B)(iii)(IV) and the Code, §26.3475(c)(1), by failing to measure any water level in the bottom of the tank to the nearest 1/8 of an inch at least once a month and make appropriate adjustments to the inventory control records; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(13) COMPANY: Larry W. Gray; DOCKET NUMBER: 2011-0042-WOC-E; IDENTIFIER: RN104953674; LOCATION: Vidor, Orange County; TYPE OF FACILITY: occupational licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: ISP Technologies, Inc.; DOCKET NUMBER: 2010-1430-AIR-E; IDENTIFIER: RN100825272; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: organic chemical manufacturing plant; RULE VIOLATED: 30 TAC §117.305(e)(1) and §122.143(4), FOP Number O-01592, STC Numbers 1.A. and 1.C., and THSC, §382.085(b), by failing to limit carbon monoxide (CO) emissions; PENALTY: $5,250; SEP offset amount of $2,100 applied to Texas Association of Resource Conservation and Development Areas, Inc.- Clean School Buses; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Linde Gas North America, LLC; DOCKET NUMBER: 2010-1187-AIR-E; IDENTIFIER: RN100217207; LOCATION: La Porte, Harris County; TYPE OF FACILITY: synthesis gas plant; RULE VIOLATED: 30 TAC §115.725(d)(1)(C) and §116.115(c), New Source Review Permit Number 4773A, SC Number 4D, and THSC, §382.085(b), by failing to continuously monitor the flow rate of the gas stream; PENALTY: $55,650; SEP offset amount of $22,260 applied to Barbers Hill Independent School District - Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Gena Hawkins, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Lowe Precast, Inc. dba Lowe Precast; DOCKET NUMBER: 2010-1627-IHW-E; IDENTIFIER: RN100594589; LOCATION: Waco, McLennan County; TYPE OF FACILITY: precast concrete structures manufacturing; RULE VIOLATED: 30 TAC §335.4(1), by failing to manage industrial solid waste in a manner to prevent the discharge or imminent threat of discharge into or adjacent to water in the state; PENALTY: $1,270; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Lorenzo E. Mata; DOCKET NUMBER: 2011-0040-WOC-E; IDENTIFIER: RN105968192; LOCATION: Webb County; TYPE OF FACILITY: occupational licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(18) COMPANY: Charley McKelvain; DOCKET NUMBER: 2011-0011-WOC-E; IDENTIFIER: RN106021819; LOCATION: Alvord, Wise County; TYPE OF FACILITY: occupational licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Dexter Monroe; DOCKET NUMBER: 2011-0041-WOC-E; IDENTIFIER: RN106022940; LOCATION: Athens, Henderson, County; TYPE OF FACILITY: occupational licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: NIRMAL & ARMAAN ENTERPRISES, INC. dba MC Corner Texaco; DOCKET NUMBER: 2010-1758-PST-E; IDENTIFIER: RN101837441; LOCATION: Grapevine, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(2) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: $5,600; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: OGRE, Inc. dba Mur-Tex; DOCKET NUMBER: 2010-1355-AIR-E; IDENTIFIER: RN100216340; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: fiberglass tank manufacturing plant; RULE VIOLATED: 30 TAC §101.20(2) and §122.143(4), 40 CFR §63.9(h) and §63.5910(b), FOP Number O-02664, STC Number 1(D), and THSC, §382.085(b), by failing to submit semi-annual compliance status reports; and 30 TAC §§122.143(4), 122.145(2)(B), and 122.146, FOP Number O-02664, GTC, and THSC, §382.085(b), by failing to submit a complete and accurate ACC and associated semi-annual deviation reports; PENALTY: $18,000; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(22) COMPANY: Orange County Water Control and Improvement District Number 1; DOCKET NUMBER: 2010-1777-MWD-E; IDENTIFIER: RN102183035; LOCATION: Orange County; TYPE OF FACILITY: municipal wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010875003, Permit Conditions Number 2.g, and the Code §26.121(a)(1), by failing to prevent the discharge of municipal wastewater into water in the state; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(23) COMPANY: Owens Corning Composite Materials, LLC; DOCKET NUMBER: 2010-1622-AIR-E; IDENTIFIER: RN100222140; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: fiberglass manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Permit Numbers 5042 and PSD-TX-844M2, SC Number 1, and THSC, §382.085(b), by failing to comply with the hourly allowable emissions rate; PENALTY: $8,300; ENFORCEMENT COORDINATOR: John Muennink, (713) 767-3500; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(24) COMPANY: Pioneer Natural Resources USA, Inc.; DOCKET NUMBER: 2010-1587-AIR-E; IDENTIFIER: RN100226505; LOCATION: Bee County; TYPE OF FACILITY: natural gas treating, compression, and transmission plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O-00098, General Operating Permit (GOP) Number 514, Site-wide requirements (SWR) (b)(2), and THSC, §382.085(b), by failing to submit a deviation report; and 30 TAC §122.143(4) and §122.146(2), FOP Number O-00098, GOP Number 514, SWR (b)(2), and THSC, §382.085(b), by failing to submit the permit compliance certification; PENALTY: $3,750; EN-

FORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(25) COMPANY: PSNKI INVESTMENT, INC. dba 7 Circle; DOCKET NUMBER: 2010-1712-PST-E;IDENTIFIER: RN101905081; LOCATION: Friendswood, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certification by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to test the cathodic protection system for performance and operability; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; PENALTY: $14,104; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: City of Rusk; DOCKET NUMBER: 2010-1532-PWS-E; IDENTIFIER: RN101391134; LOCATION: Cherokee County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to obtain approval by the executive director prior to placing a well into service as a PWS source; PENALTY: $267; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(27) COMPANY: Ryan Companies US, Inc.; DOCKET NUMBER: 2011-0018-WQ-E; IDENTIFIER: RN106044647; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(28) COMPANY: Town of Lakewood Village; DOCKET NUMBER: 2010-1664-MWD-E; IDENTIFIER: RN101917706; LOCATION: Denton County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010930001, Final Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for five-day carbonaceous biochemical oxygen demand and chlorine; 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ001093001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; and 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0010903001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2009; PENALTY: $9,922; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: United States Gypsum Company; DOCKET NUMBER: 2010-1628-AIR-E; IDENTIFIER: RN10021281; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: wallboard manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 24990, SC Number 1, and THSC, §382.085(b), by failing to comply with the permitted emission rate for CO of 2.73 pounds per hour; and 30 TAC §117.9020(2)(C)(i) and THSC, §382.085(b), by failing to submit results of the initial demonstration of compliance required under 30 TAC §117.335(a)(1) and (4); PENALTY: $17,375; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(30) COMPANY: City of White Settlement; DOCKET NUMBER: 2010-1747-WQ-E; IDENTIFIER: RN101242642; LOCATION: White Settlement, Tarrant County; TYPE OF FACILITY: wastewater collection system; RULE VIOLATED: the Code, §26.121, by failing to prevent an unauthorized discharge; and the Code, §26.039(b), by failing to submit the noncompliance notification within 24 hours after the discharge occurred; PENALTY: $8,250; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201100314
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 25, 2011

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 7, 2011.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 7, 2011.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: City of New Boston; DOCKET NUMBER: 2009-1297-MWD-E; TCEQ ID NUMBER: RN101920916; LOCATION: 2,500 feet southeast of the intersection of State Highway 8 and Farm-to-Market Road 1840, approximately 1.75 miles southeast of New Boston, Bowie County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain a Multi-Sector General Permit (MSGP), by failing to obtain

an MSGP for industrial storm water; 30 TAC §305.125(5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010482001, Operation Requirements Number 1, by failing to properly operate and maintain all systems of treatment and control (and related appurtenances) installed or used to achieve compliance with permit conditions; and TWC, §26.121(a), 30 TAC §305.125(4) and (5), and TPDES Permit Number WQ0010482001, Permit Conditions Number 2(g), by failing to prevent the unauthorized discharges of wastewater from the Sunset Street lift station into or adjacent to water in the state; PENALTY: $28,120; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Coastway Inc. dba Kwick Stop 1; DOCKET NUMBER: 2010-1253-PST-E; TCEQ ID NUMBER: RN102379104; LOCATION: 2000 Texas Avenue, Bridge City, Orange County; TYPE OF FACILITY: two underground storage tanks (USTs) and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.244(3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct monthly inspections of the Stage II vapor recovery system; 30 TAC §115.246(3) and THSC, §382.085(b), by failing to maintain a record of any maintenance conducted on any part of the Stage II equipment; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification; PENALTY: $4,130; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Ronald West, L.L.C.; DOCKET NUMBER: 2008-1371-MLM-E; TCEQ ID NUMBER: RN105163950; LOCATION: one mile east of Highway 339 on County Road (CR) 656, Kosse, Limestone County; TYPE OF FACILITY: Land Reclamation Project Using Tires (LRPUT); RULES VIOLATED: 30 TAC §330.15(a) and (c) and TWC, §26.121(a), by failing to prevent the disposal of unauthorized waste resulting in an unauthorized discharge into or adjacent to water in the state; and 30 TAC §328.60(a), and TCEQ Processor Registration ID Number 6200399, by failing to store scrap tires in totally enclosed and lockable containers; PENALTY: $1,800; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Shiloh Ridge Water Supply Corporation; DOCKET NUMBER: 2010-0061-MLM-E; TCEQ ID NUMBER: RN101215549; LOCATION: two miles east of Highway 59, on Farm-to-Market Road 1988, Polk County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross connections or other potential contaminant hazard exists; 30 TAC §290.46(f)(2), (3)(A)(i)(III), (ii)(III), and (D)(ii), by failing to maintain facility operation and maintenance records and have them available for review by commission personnel during the investigation; 30 TAC §290.46(s)(1), by failing to calibrate well flow meters at the facility at least once every three years; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system once every seven days; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.2 milligrams per liter (mg/L) of free chlorine throughout the distribution system at all times; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps with a total capacity of 2.0 gallons per minute (gpm) per connection; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of manual disinfectant residual analyzers in the chlorine residual test kit at least once every 30 days using chlorine solutions of known concentrations; 30 TAC §290.41(c)(1)(D), by failing to prevent livestock from occupying land within 50 feet of Well Number 2; 30 TAC §290.46(v), by failing to securely install all facility electrical wiring in compliance with a local or national electrical code; 30 TAC §290.43(d)(1), by failing to provide the facility's two 1,000 gallon pressure tanks with an access port for periodic inspections; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices at the facility to ensure the good working condition and general appearance of its facilities and equipment; 30 TAC §290.41(c)(3)(P), by failing to provide an all-weather access road to Well Numbers 2 and 3; and 30 TAC §288.30(5), by failing to develop and maintain a drought contingency plan for the facility; PENALTY: $7,282; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: Tiki Food Mart, L.L.C.; DOCKET NUMBER: 2009-2052-PST-E; TCEQ ID NUMBER: RN102232055; LOCATION: 200 Tiki Drive, Galveston, Galveston County; TYPE OF FACILITY: four USTS and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.50(d)(4)(A)(ii)(II) and TWC, §26.3475(c)(1), by failing to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallons per hour from any portion of the tank which contains regulated substances; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system at the facility; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST, 30 TAC §334.8(c)(4)(C), by failing to submit a properly completed UST registration and self-certification form to the agency within 30 days of ownership change; PENALTY: $13,935; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: White Buffalo Environmental Services, LLC, Dead Bison, Inc., and Gregory Swindle; DOCKET NUMBER: 2009-1678-MLM-E; TCEQ ID NUMBER: RN105767412; LOCATION: 5425 Ben Ficklin Road, San Angelo, Tom Green County; TYPE OF FACILITY: environmental consulting firm; RULES VIOLATED: 30 TAC §331.3(a) and §335.4 and TWC, §26.121, by failing to prevent the unauthorized discharge of a municipal hazardous waste into an injection well; 30 TAC §331.7(a) and 40 CFR §144.11, by failing to obtain authorization to operate an underground injection well; 30 TAC §331.10(d) and (e), by failing to submit the appropriate inventory information to the TCEQ; 30 TAC §335.9(a)(1), by failing to keep records of monthly waste generation; and 30 TAC §324.1

and 40 CFR §279.22(c), by failing to label or clearly mark containers storing used oil with the words "Used Oil"; PENALTY: $13,436, San Angelo Friends of the Environment - Recycling Program for Electronics, Glass, Plastics; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-201100315
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 25, 2011

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders (AOs) entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 7, 2011.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 7, 2011.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: D & K Del Bosque, Inc. dba Old Gringo Lake Supply; DOCKET NUMBER: 2010-0574-PWS-E; TCEQ ID NUMBER: RN105814842; LOCATION: 2351 Farm-to-Market (FM) 3519, Justiceburg, Garza County; TYPE OF FACILITY: restaurant with a public water system; RULES VIOLATED: 30 TAC §290.39(c) and (h)(1), and Texas Health and Safety Code (THSC), §341.035(a) and (c), by failing to submit and receive commission approval of plans and specifications prior to commencing construction of a new public water system; 30 TAC §290.46(f), by failing to keep on file and make available for commission review facility records; 30 TAC §290.42(b)(1), by failing to provide disinfection facilities for microbiological control and distribution protection; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends at least three feet from the exterior well casing in all directions; 30 TAC §290.41(c)(3)(K), by failing to provide the well with a casing vent; 30 TAC §290.46(v), by failing to ensure that the facility's electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.41(c)(3)(O), by failing to ensure that the well house is locked during periods of darkness and when the facility is unattended; 30 TAC §290.45(d)(2)(A)(ii) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 220 gallons; and 30 TAC §290.41(c)(3)(N), by failing to provide the well with a flow measuring device to measure production yields and provide for the accumulation of water production data; PENALTY: $4,034; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7613.

(2) COMPANY: Dempsey Dunn; DOCKET NUMBER: 2010-0714-MSW-E; TCEQ ID NUMBER: RN105797989; LOCATION: 6279 County Road (CR), Grapeland, Houston County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW); RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent unauthorized disposal of municipal solid waste; PENALTY: $1,050; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Garland Kimbrell dba Timber We'll Take It; DOCKET NUMBER: 2010-1423-MSW-E; TCEQ ID NUMBER: RN102938321; LOCATION: 2711 114th Street, Lubbock, Lubbock County; TYPE OF FACILITY: recycling center; RULES VIOLATED: 30 TAC §37.921 and §328.5(c)(1) and (d) and TCEQ AO Docket Number 2006-0395-MSW-E, Ordering Provision Number 2.a.i, by failing to establish and maintain financial assurance; and 30 TAC §328.4(b)(3)(A) and TCEQ AO Docket Number 2006-0395-MSW-E, Ordering Provision Number 2.a.ii., by failing to recycle or transfer to a different site for recycling at least 50% by weight or volume of material accumulated at the beginning of the period during each subsequent six-month recycling period; PENALTY: $78,225; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7613.

(4) COMPANY: Hendrix Properties, L.L.C. and complete Care Automotive, L.L.C.; DOCKET NUMBER: 2010-1452-PST-E; TCEQ ID NUMBER: RN101432813; LOCATION: 5605 Calder Avenue, Beaumont, Jefferson County; TYPE OF FACILITY: four underground storage tanks (USTs) and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.46(g)(1)(H), by failing to ensure that the observation well access vault or manhole is equipped with a liquid tight cover and the observation well is properly capped, labeled, and secured or locked to prevent unauthorized access, tampering, and any deliberate or accidental depositing of unauthorized substances; and 30 TAC §334.49 and §334.54(b)(2), (c)(1), (2), and (d)(2) and TWC, §26.3475(d), by failing to ensure that a corrosion protection system is operating and maintained in a manner that will ensure continuous corrosion protection to all underground components of the UST system; PENALTY: $4,725; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: Horacio Tomas Meneses Bonilla; DOCKET NUMBER: 2010-0774-MSW-E; TCEQ ID NUMBER: RN105818900; LOCATION: 3101 North Zaragoza Road, El Paso, El Paso County; TYPE OF FACILITY: tractor-trailer storage yard with a mechanic shop; RULES VIOLATED: 30 TAC §324.1 and 40 Code of Federal Regulations (CFR) §279.22(d), by failing to prevent unauthorized discharge of used oil; PENALTY: $262; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(6) COMPANY: Louisa Valdez; DOCKET NUMBER: 2010-1356-PST-E; TCEQ ID NUMBER: RN101846871; LOCATION: 702 North Avenue F, Post, Garza County; TYPE OF FACILITY: three USTs and a former gas station; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $2,750; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7613.

(7) COMPANY: Marvin Wayne Taylor; DOCKET NUMBER: 2010-1311-MSW-E; TCEQ ID NUMBER: RN105362701; LOCATION: 1071 CR 3341, Joaquin, Shelby County; TYPE OF FACILITY: automotive repair shop; RULES VIOLATED: TCEQ AO Docket Number 2008-0115-MSW-E, Ordering Provisions Numbers 2.b.i and 2.b.ii, 30 TAC §324.15, and 40 CFR §279.22(d), by failing to properly respond to the release of used oil upon detection; PENALTY: $600; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Miros Stritz; DOCKET NUMBER: 2009-1313-PST-E; TCEQ ID NUMBER: RN102239852; LOCATION: 1620 Texas Avenue, Texas City, Galveston County; TYPE OF FACILITY: three USTs; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $6,500; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: SETX Clearwater Environmental, L.L.C.; DOCKET NUMBER: 2010-1047-MLM-E; TCEQ ID NUMBER: RN105904635; LOCATION: 9501 Jade Avenue, Port Arthur, Jefferson County; TYPE OF FACILITY: industrial wastewater disposal facility; RULES VIOLATED: 30 TAC §324.1 and §324.4(1) and 40 CFR §279.22, by failing to prevent the unauthorized discharge of used oil; 30 TAC §324.6 and 40 CFR §279.22(c), by failing to clearly label containers storing used oil; 30 TAC §324.12(2) and §324.4(2)(C)(i) and 40 CFR §279.51, by failing to obtain a used oil registration and United States Environmental Protection Agency (EPA) ID number prior to conducting used oil activities; 30 TAC §335.4, by failing to prevent the unauthorized discharge of industrial hazardous waste (IHW); 30 TAC §324.12(3) and 40 CFR §279.55, by failing to maintain an adequate Waste Analysis Plan; PENALTY: $5,000; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: SETX Clearwater Environmental, L.L.C.; DOCKET NUMBER: 2010-1047-MLM-E; TCEQ ID NUMBER: RN105904635; LOCATION: 9501 Jade Avenue, Port Arthur, Jefferson County; TYPE OF FACILITY: industrial wastewater disposal facility; RULES VIOLATED: 30 TAC §324.1 and §324.4(1) and 40 CFR §279.22, by failing to prevent the unauthorized discharge of used oil; 30 TAC §324.6 and 40 CFR §279.22(c), by failing to clearly label containers storing used oil; 30 TAC §324.12(2) and §324.4(2)(C)(i) and 40 CFR §279.51, by failing to obtain a used oil registration and EPA ID number prior to conducting used oil activities; 30 TAC §335.4, by failing to prevent the unauthorized discharge of IHW; 30 TAC §324.12(3) and 40 CFR §279.55, by failing to maintain an adequate Waste Analysis Plan; PENALTY: $5,000; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Terry Beverlin; DOCKET NUMBER: 2010-1294-MSW-E; TCEQ ID NUMBER: RN105959795; LOCATION: 4991 Spiller Road, Lumberton, Hardin County; TYPE OF FACILITY: unauthorized MSW; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: $1,000; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201100316
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 25, 2011

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 7, 2011.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's

jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400, and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 7, 2011.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Dhan Guru Inc. dba Food & Fuel 3; DOCKET NUMBER: 2010-1307-PST-E; TCEQ ID NUMBER: RN102015997; LOCATION: 10755 Veterans Memorial Drive, Houston, Harris County; TYPE OF FACILITY: one UST and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(4) and (6) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for a UST involved in the retail sale of petroleum substances used as a motor fuel; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detector at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to provide a release detection method for the UST by failing to conduct reconciliation of inventory control records at least once a month in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.50(d)(1)(B)(iii)(I) and TWC, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.42(i), by failing to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of liquid and debris; 30 TAC §115.242(3)(J) and THSC, §382.085(b), by failing to maintain the Stage II equipment in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order and free of defects that would impair the effectiveness of the system; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every twelve months; PENALTY: $12,838; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201100317
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 25, 2011

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Notice of Water Quality Applications

The following notice was issued on January 13, 2011 through January 21, 2011.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CLINT INDEPENDENT SCHOOL DISTRICT has applied for a renewal with changes to TCEQ Permit No. WQ0014005001, to authorize the replacement of the septic tank system with an activated sludge process plant. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 7,050 gallons per day via sub subsurface drip irrigation on 1.62 acres of non-public access land. No discharge of pollutants into water in the State is authorized by this permit. The wastewater treatment facility and disposal site are located just north of Montana Avenue on O'Shea Road, approximately 3.3 miles east-northeast of the intersection of Zaragosa Road (State Highway 659) and Montana Avenue (U.S. Highway 62/180) in El Paso County, Texas 79927.

VALERO REFINING TEXAS LP which operates Valero Texas City Refinery, a petroleum refining facility, has applied for a major amendment to TPDES Permit No. WQ0000449000 to remove Outfall 001, include definition for utility wastewater for Outfall 009, correct critical dilution for biomonitoring requirements, and authorize the discharge of hydrostatic test water via Outfalls 006 and 007 on an intermittent and flow variable basis. The current permit authorizes the discharge of treated process wastewater, PTU effluent, utility wastewater, hydrostatic test water, treated domestic wastewater, laboratory wastewater, and storm water at a daily average flow not to exceed 4,500,000 gallons per day via Outfalls 001 and 009; storm water, exchanger filter backwash, steam condensate, water softener, boiler blowdown, and hydrostatic test water on an intermittent and flow variable basis via Outfall 002; hydrostatic test water, steam condensate, boiler blowdown, and storm water (including Coker Unit storm water) on an intermittent and flow variable basis via Outfall 004; storm water on an intermittent and flow variable basis via Outfall 005; and raw water clarifier water, steam condensate, water softener, boiler blowdown, gravity filter backwash, steam condensate, reverse osmosis reject water, tank farm water, and storm water on an intermittent and flow variable basis via Outfalls 006, and 007. The facility is located approximately 1600 feet northeast of the intersection of State Highway 519 and Loop 197 East in the City of Texas City, Galveston County, Texas 77590.

SNIDER INDUSTRIES LLP which operates the Snider Industries Sawmill, has applied for a renewal of TPDES Permit No. WQ0002770000, which authorizes the discharge of once through cooling water and previously regulated storm water runoff from Sue Belle Lake on an intermittent and flow variable basis via Outfall 001; truck and equipment washwater, and previously regulated storm water runoff on an intermittent and flow variable basis via Outfall 002; and boiler blowdown, groundwater seepage, and previously regulated storm water runoff on an intermittent and flow variable basis via Outfall 004. The facility is located on the northeast and northwest corners of the intersection of Loop 390 and Sue Belle Lake Road, approximately two miles north of the City of Marshall, Harrison County, Texas 75670.

MESA VINEYARDS L P which operates St. Genevieve Winery, has applied for a major amendment to TCEQ Permit No. WQ0003177000 to authorize a change from seasonal to annual flow, the addition of an

evaporation pond, and an increase in the disposal of treated wastewater to a volume not to exceed a daily average flow of 12,890 gallons per day and not to exceed a flow of 4,705,000 gallons per year via evaporation. The current permit authorizes a daily average flow not to exceed 6,000 gallons per day for the months of November through March; 5,750 gallons per day for the months of April through June; and 16,500 gallons per day for the months of July through October via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and evaporation ponds are located 25 miles east of the City of Fort Stockton on U.S. Interstate Highway 10, 1.5 miles south of exit marker 285, Pecos County, Texas 79735-0130.

THE CITY OF DE KALB has applied for a renewal of TPDES Permit No. WQ0010062002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located south of De Kalb, approximately 1.5 miles due south of the intersection of U.S. Highway 82 and Farm-to-Market Road 992 in Bowie County, Texas 75559.

AQUA TEXAS INC has applied for a renewal of TPDES Permit No. WQ0011314001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located at 18604 Candleview Drive, north of Cypress Creek, approximately two miles northwest of the intersection of Interstate Highway 45 and Farm-to-Market Road 1960 in Harris County, Texas 77388.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. WQ0011457001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 11,000 gallons per day. The facility is located at 1710 East Interstate Highway 10, Orange, Texas, approximately 3,000 feet east of Cow Bayou, on the south side of Interstate Highway 10 between the cities of Vidor and Orange in Orange County, Texas 77630.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 24 has applied for a renewal of TPDES Permit No. WQ0011988001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 17707 Stuebner Airline Road, 405 feet north of the intersection of Theisswood Road and Theiss Gully in Harris County, Texas 77379.

FRY ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011989001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located at 19903 Franz Road, approximately 1,000 feet west of the intersection of Franz Road and Fry Road in Harris County, Texas 77449.

BIG OAKS MUNICIPAL UTILITY DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0013021001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is located at 7002 Westmoor Drive, approximately 4,000 feet southwest of the intersection of Farm-to-Market Road 1464 and Farm-to-Market Road 1093 in Fort Bend County, Texas 77469.

KLEBERG COUNTY has applied for a renewal of TPDES Permit No. WQ0013374003 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 48,500 gallons per day. The facility is located in the southwest corner of the Town of Ricardo, approximately 0.1 mile west of U.S. Highway 77 and approximately 0.34 mile south of Farm-to-Market Road 1118 in Kleberg County, Texas 78363.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201100332
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 26, 2011

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Texas Facilities Commission

Request for Proposals #303-1-20268

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services, the Health and Human Services Commission, the Department of Aging and Disability Services, and the Department of State Health Services, announces the issuance of Request for Proposals (RFP) #303-1-20268. TFC seeks a five (5) or ten (10) year lease of approximately 26,509 square feet of usable office space in the City of Victoria, Victoria County, Texas.

The deadline for questions is February 21, 2011, and the deadline for proposals is February 28, 2011, at 3:00 p.m. The target award date is May 1, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Contract Specialist Sandy Williams at sandy.williams@tfc.state.tx.us. The RFP and any addendum to the original RFP will be posted to the Electronic State Business Daily (ESBD). A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=92815.*

TRD-201100301
Kay Molina
General Counsel
Texas Facilities Commission
Filed: January 24, 2011

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Texas Health and Human Services Commission

Notice of Adopted Reimbursement Rates for Non-State Operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR)

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted new per diem payment rates for the non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR). The ICF/MR program is operated by the Texas Department of Aging and Disability Services (DADS). These payment rates were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification." The public hearing notice was published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11753) and the proposed rates were published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11748).

The adopted payment rates, to be effective February 1, 2011, are as follows:

Per Diem Rates for Non-State Operated ICF/MR Services by Level of Need and Facility Size

Level of Need	8 or Less Beds	9-13 Beds	14+ Beds
1 Intermittent	$144.39	$118.13	$112.17
5 Limited	$160.87	$134.14	$119.72
8 Extensive	$182.97	$159.04	$133.32
6 Pervasive	$224.05	$190.39	$179.56
9 Pervasive +	$406.44	$386.16	$387.57

Methodology and Justification. The adopted rates were determined in accordance with the rate setting methodologies codified at Texas Administrative Code (TAC) Title 1, Chapter 355, Subchapter A, §355.112, Attendant Compensation Rate Enhancement, and Subchapter D, §355.456, Rate Setting Methodology. These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101, Introduction, §355.109, Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs and 1 TAC Chapter 355, Subchapter B, §355.201, Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission. These changes are being made in response to a letter sent to all state agencies by the Governor, Lieutenant Governor and House Speaker on December 6, 2010, asking them to identify savings of 2.5 percent of their original general revenue and general-revenue-dedicated appropriations for fiscal year 2011.

TRD-201100298
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission

Filed: January 24, 2011

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Notice of Adopted Reimbursement Rates for Nursing Facilities

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted new per diem payment rates for the Nursing Facility program operated by the Texas Department of Aging and Disability Services (DADS). These payment rates were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification." The public hearing notice was published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11752) and the proposed rates were published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11748).

The adopted payment rates, to be effective February 1, 2011, are as follows:

Base Rates by Resource Utilization Group (RUG) class:

RUG	RUG Base Rate
RAD (Rehabilitation D)	$182.42
RAC (Rehabilitation C)	$161.13
RAB (Rehabilitation B)	$151.33
RAA (Rehabilitation A)	$133.09
SE3 (Extensive Services 3)	$217.86
SE2 (Extensive Services 2)	$184.98
SE1 (Extensive Services 1)	$160.62
SSC (Special Care C)	$156.86
SSB (Special Care B)	$148.29
SSA (Special Care A)	$147.96
CC2 (Clinically Complex C2)	$128.13
CC1 (Clinically Complex C1)	$121.37
CB2 (Clinically Complex B2)	$117.54
CB1 (Clinically Complex B1)	$112.23
CA2 (Clinically Complex A2)	$106.55
CA1 (Clinically Complex A1)	$100.16
IB2 (Impaired Cognition B2)	$106.71
IB1 (Impaired Cognition B1)	$99.49
IA2 (Impaired Cognition A2)	$90.86
IA1 (Impaired Cognition A1)	$86.16
BB2 (Behavior Problems B2)	$104.78
BB1 (Behavior Problems B1)	$94.83
BA2 (Behavior Problems A2)	$89.15
BA1 (Behavior Problems A1)	$80.67
PE2 (Reduced Physical Function E2)	$112.84
PE1 (Reduced Physical Function E1)	$106.67
PD2 (Reduced Physical Function D2)	$108.17
PD1 (Reduced Physical Function D1)	$101.79
PC2 (Reduced Physical Function C2)	$99.09
PC1 (Reduced Physical Function C1)	$95.02
PB2 (Reduced Physical Function B2)	$92.51
PB1 (Reduced Physical Function B1)	$88.03
PA2 (Reduced Physical Function A2)	$82.55
PA1 (Reduced Physical Function A1)	$77.89
Default when Minimum Date Set assessment data are incomplete	$77.89
Default when a Minimum Data Set assessment is missing.	$77.89
Supplemental Payments:	
Ventilator - Continuous	$121.34
Ventilator - Less than Continuous	$48.54
Pediatric Tracheostomy	$72.80

Facilities participating in the Enhanced Direct Care Staff Rate will receive one of the following payment rates per day in addition to the above payment rates based upon their level of enrollment in the Enhanced Direct Care Staff Rate. Enrollment levels are indicated by the number of Licensed Vocational Nurse (LVN) equivalent minutes a facility is required to provide to avoid recoupment of enhanced funds. LVN-equivalent minutes can be provided by Registered Nurses (RNs), LVNs, Medication Aides and/or Certified Nurse Aides.

Minutes Associated with Adopted Rate	Adopted Rate Per Diem
1 LVN Minute = 2.05 Aide Minutes = 0.68 RN Minutes	$0.38
2 LVN Minutes = 4.11 Aide Minutes = 1.37 RN Minutes	$0.76
3 LVN Minutes = 6.16 Aide Minutes = 2.05 RN Minutes	$1.14
4 LVN Minutes = 8.21 Aide Minutes = 2.74 RN Minutes	$1.52
5 LVN Minutes = 10.26 Aide Minutes = 3.42 RN Minutes	$1.90
6 LVN Minutes = 12.32 Aide Minutes = 4.11 RN Minutes	$2.28
7 LVN Minutes = 14.37 Aide Minutes = 4.79 RN Minutes	$2.66
8 LVN Minutes = 16.42 Aide Minutes = 5.47 RN Minutes	$3.04
9 LVN Minutes = 18.47 Aide Minutes = 6.16 RN Minutes	$3.42
10 LVN Minutes = 20.53 Aide Minutes = 6.84 RN Minutes	$3.80
11 LVN Minutes = 22.58 Aide Minutes = 7.53 RN Minutes	$4.18
12 LVN Minutes = 24.63 Aide Minutes = 8.21 RN Minutes	$4.56
13 LVN Minutes = 26.68 Aide Minutes = 8.89 RN Minutes	$4.94
14 LVN Minutes = 28.74 Aide Minutes = 9.58 RN Minutes	$5.32
15 LVN Minutes = 30.79 Aide Minutes = 10.26 RN Minutes	$5.70
16 LVN Minutes = 32.84 Aide Minutes = 10.95 RN Minutes	$6.08
17 LVN Minutes = 34.89 Aide Minutes = 11.63 RN Minutes	$6.46
18 LVN Minutes = 36.95 Aide Minutes = 12.32 RN Minutes	$6.84
19 LVN Minutes = 39.00 Aide Minutes = 13.00 RN Minutes	$7.22
20 LVN Minutes = 41.05 Aide Minutes = 13.68 RN Minutes	$7.60
21 LVN Minutes = 43.10 Aide Minutes = 14.37 RN Minutes	$7.98
22 LVN Minutes = 45.16 Aide Minutes = 15.05 RN Minutes	$8.36
23 LVN Minutes = 47.21 Aide Minutes = 15.74 RN Minutes	$8.74
24 LVN Minutes = 49.26 Aide Minutes = 16.42 RN Minutes	$9.12
25 LVN Minutes = 51.32 Aide Minutes = 17.11 RN Minutes	$9.50
26 LVN Minutes = 53.37 Aide Minutes = 17.79 RN Minutes	$9.88
27 LVN Minutes = 55.42 Aide Minutes = 18.47 RN Minutes	$10.26

Facilities that verify liability insurance coverage acceptable to HHSC will receive one of the following payment rates per day in addition to the above payment rates based upon the type of liability insurance coverage they maintain:

Type of Liability Insurance	Adopted Rate Per Diem
General and Professional	$1.58
Professional Only	$1.45
General Only	$0.13

Methodology and Justification. The adopted rates were determined in accordance with the rate setting methodology at Texas Administrative Code (TAC) Title 1, Chapter 355, Subchapter A, §355.307, Reimbursement Setting Methodology; §355.308, Direct Care Staff Rate Component; and §355.312, Reimbursement Setting Methodology - Liability Insurance Costs. These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101, Introduction, and §355.109, Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs and 1 TAC Chapter 355, Subchapter B, §355.201, Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission. These changes are being made in response to a letter sent to all State Agencies by the Governor, Lieutenant Governor and House Speaker on December 6, 2010, asking them to identify savings of 2.5 percent of their original

general revenue and general-revenue-dedicated appropriations for fiscal year 2011.

TRD-201100290
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 24, 2011

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on April 20, 2011, at 2:00 p.m., to receive comment on proposed Medicaid payment rates for the Blind Children's Vocational Discovery and Development Program (BCVDDP). The public hearing will be held in the Permian Basin Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and the Texas Administrative Code, Title 1, §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates for the BCVDDP are proposed to be effective June 1, 2011.

Methodology and Justification. The proposed payment rates were calculated in accordance with §355.8381, which addresses the reimbursement methodology for case management services for children who are blind and visually impaired.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after April 5, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis Department by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis Department, HHSC, Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis Department at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis Department, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact the Rate Analysis Department at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201100236
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 20, 2011

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 10-070, amendment number 963, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The proposed amendment raises the age of eligibility and updates the coverage pages for targeted case management for blind and visually impaired children by using the Centers for Medicare and Medicaid Services' (CMS) recommended template. The requested effective date for the proposed amendment is January 1, 2011.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $30,944 for the remainder of federal fiscal year 2011, consisting of $18,750 in federal funds and $12,194 in state general revenue. For federal fiscal year 2012, the estimated additional annual expenditure is $41,258 consisting of $25,000 in federal funds and $16,258 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Ashley Fox by mail at HHSC, P.O. Box 13247, Mail Code H600, Austin, TX 78711; by telephone at (512) 491-1165; by facsimile at (512) 491-1953; or by e-mail at ashley.fox@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201100270
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 21, 2011

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 11-005 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The proposed amendment removes from the state plan the targeted case management services provided by the Texas Department of Family and Protective Services (DFPS). The state is submitting the amendment in order to comply with the regulations located in the Code of Federal Regulations, Title 42, §440.169 and §441.18. Per these regulations, the case management services delivered by DFPS do not currently meet the requirements for the provision of case management as a state plan service. The state has not claimed federal Medicaid funds for this service since 2008. The requested effective date for the proposed amendment is January 1, 2011. The proposed amendment has no anticipated fiscal impact.

To obtain copies of the proposed amendment, interested parties may contact Ashley Fox by mail at HHSC, PO Box 13247, Mail Code H600, Austin, TX 78711; by telephone at (512) 491-1165; by facsimile at (512) 491-1953; or by e-mail at ashley.fox@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201100320
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 25, 2011

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Texas Lottery Commission

Instant Game Number 1353 "9's in a Line"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1353 is "9'S IN A LINE". The play style for this game is "straight line".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1353 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1353.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: APPLE SYMBOL, ORANGE SYMBOL, MELON SYMBOL, BANANA SYMBOL, STAR SYMBOL, LEMON SYMBOL, BELL SYMBOL, HORSESHOE SYMBOL, CLOVER SYMBOL, GOLD BAR SYMBOL, 7 SYMBOL, WISHBONE SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, CHERRY SYMBOL, 9 SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100 or $999.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1353 - 1.2D

PLAY SYMBOL	CAPTION
APPLE SYMBOL	APL
ORANGE SYMBOL	ORG
MELON SYMBOL	MEL
BANANA SYMBOL	BAN
STAR SYMBOL	STA
LEMON SYMBOL	LEM
BELL SYMBOL	BEL
HORSESHOE SYMBOL	SHO
CLOVER SYMBOL	CLO
GOLD BAR SYMBOL	BAR
7 SYMBOL	SVN
WISHBONE SYMBOL	WBN
CROWN SYMBOL	CRN
DIAMOND SYMBOL	DMD
CHERRY SYMBOL	CHY
9 SYMBOL	NIN
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$999	9HUN99

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $40.00 or $100.

H. High-Tier Prize - A prize of $999.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1353), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1353-0000001-001.

K. Pack - A pack of "9'S IN A LINE" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "9'S IN A LINE" Instant Game No. 1353 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "9'S IN A LINE" Instant Game is determined once the latex on the ticket is scratched off to expose 16 (sixteen) Play Symbols. If a player reveals 3 identical play symbols within a ROW, the player wins the PRIZE for that ROW. If a player reveals 3 "9" play symbols within a ROW, the player wins $999 instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 16 (sixteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 16 (sixteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 16 (sixteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 16 (sixteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No identical non-winning prize symbols on a ticket.

C. No identical non-winning rows on a ticket (in any order).

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. No three identical non-winning play symbols in a column or diagonal for three adjacent rows.

F. The three "9" play symbols will only appear in the same row on intended winning tickets as directed by the prize structure and will always appear with the $999 prize symbol.

G. No other play symbol will appear three times within a row with the $999 prize symbol.

H. The "9" play symbol may appear on non-winning tickets but never appear more than twice on a ticket.

I. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "9'S IN A LINE" Instant Game prize of $1.00, $2.00, $4.00, $5.00 $10.00, $20.00, $40.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $40.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "9'S IN A LINE" Instant Game prize of $999, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "9'S IN A LINE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "9'S IN A LINE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "9'S IN A LINE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,160,000 tickets in the Instant Game No. 1353. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1353 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,209,600	16.67
$2	2,016,000	10.00
$4	504,000	40.00
$5	134,400	150.00
$10	134,400	150.00
$20	58,800	342.86
$40	32,760	615.38
$100	1,680	12,000.00
$999	168	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.93. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1353 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1353, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201100286
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 24, 2011

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Instant Game Number 1354 "$500 Million Frenzy"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1354 is "$500 MILLION FRENZY". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1354 shall be $20.00 per ticket.

1.2 Definitions in Instant Game No. 1354.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: APPLE SYMBOL, ORANGE SYMBOL, MELON SYMBOL, BANANA SYMBOL, STAR SYMBOL, LEMON SYMBOL, BELL SYMBOL, HORSESHOE SYMBOL, CLOVER SYMBOL, GOLD BAR SYMBOL, 7 SYMBOL, WISHBONE SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, CHERRY SYMBOL, STARBURST SYMBOL, CHIP SYMBOL, $5.00, $10.00, $20.00, $25.00, $30.00, $40.00, $50.00, $100, $200, $500, $1,000, $10,000, $25,000, $ONE MILL, $2.5 MILL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and STAR WINX5 SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1354 - 1.2D

PLAY SYMBOL	CAPTION
APPLE SYMBOL	APL
ORANGE SYMBOL	ORG
MELON SYMBOL	MEL
BANANA SYMBOL	BAN
STAR SYMBOL (Game 1)	STA
LEMON SYMBOL	LEM
BELL SYMBOL	BEL
HORSESHOE SYMBOL	SHO
CLOVER SYMBOL	CLO
GOLD BAR SYMBOL	BAR
7 SYMBOL	SVN
WISHBONE SYMBOL	WBN
CROWN SYMBOL	CRN
DIAMOND SYMBOL	DMD
CHERRY SYMBOL	CHY
WIN SYMBOL	WINX5
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$30.00	THIRTY
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$500	FIV HUND
$1,000	ONE THOU
$10,000	10 THOU
$25,000	25 THOU
$ONE MILL	ONE MIL
$2.5 MILL	2.5 MIL
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN

16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	THON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
CHIP SYMBOL	CHIP
STAR SYMBOL (Game 2)	WINX5

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $20.00.

G. Mid-Tier Prize - A prize of $25.00, $30.00, $50.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $10,000, $25,000, $1,000,000 or $2,500,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1354), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 1354-0000001-001.

K. Pack - A pack of "$500 MILLION FRENZY" Instant Game tickets contains 025 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$500 MILLION FRENZY" Instant Game No. 1354 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$500 MILLION FRENZY" Instant Game is determined once the latex on the ticket is scratched off to expose 57 (fifty-seven) Play Symbols. For GAME 1, if a player reveals 3 identical play symbols within a PULL, the player wins PRIZE for that PULL. If a player reveals a WIN play symbol, the player wins 5 TIMES the PRIZE for that PULL. For GAME 2, if a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play

symbols, the player wins PRIZE for that number. If a player reveals a "star" play symbol, the player wins 5 TIMES the PRIZE for that symbol. For GAME 3, if a player reveals three identical prize amounts the player wins that amount. If a player reveals 2 identical PRIZE amounts and a "chip" play symbol, the player wins that prize instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 57 (fifty-seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 57 (fifty-seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 57 (fifty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 57 (fifty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The $5 and $10 prize symbols will only appear when they are used to create a win on winning tickets.

C. The top prize symbol will appear on every ticket unless otherwise restricted.

D. No more than three like non-winning prize symbols on a ticket.

E. GAME 1: No 3 or more identical non-winning prize symbols in this game.

F. GAME 1: No identical non-winning pulls on a ticket (in any order).

G. GAME 1: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

H. GAME 1: No three identical non-winning play symbols in a column or diagonal for three adjacent pulls.

I. GAME 2: No duplicate WINNING NUMBERS play symbols.

J. GAME 2: No duplicate non-winning YOUR NUMBERS play symbols.

K GAME 2: Non-winning prize symbols will never be the same as the winning prize symbol(s) within this game.

L. GAME 2: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 20 and $20).

M. GAME 2: No 3 or more identical non-winning prize symbols.

N. GAME 3: No four or more identical play symbols.

O. GAME 3: No three pairs of identical play symbols.

P. GAME 3: No more than two identical play symbols will appear when the "CHIP" (auto win) play symbol appears.

2.3 Procedure for Claiming Prizes.

A. To claim a "$500 MILLION FRENZY" Instant Game prize of $20.00, $25.00, $30.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that

the Texas Lottery Retailer may, but is not required, to pay a $25.00, $30.00, $50.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$500 MILLION FRENZY" Instant Game prize of $1,000, $10,000, $25,000 or $1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "$500 MILLION FRENZY" top level prize of $2,500,000, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "$500 MILLION FRENZY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$500 MILLION FRENZY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$500 MILLION FRENZY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 33,600,000 tickets in the Instant Game No. 1354. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1354 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$20	6,384,000	5.26
$25	2,688,000	12.50
$30	1,344,000	25.00
$50	672,000	50.00
$100	812,000	41.38
$200	147,000	228.57
$500	44,800	750.00
$1,000	22,400	1,500.00
$10,000	840	40,000.00
$25,000	280	120,000.00
$1,000,000	40	840,000.00
$2,500,000	10	3,360,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.77. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1354 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1354, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201100287
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 24, 2011

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Notice of Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments to 16 TAC §402.502 relating to Charitable Use of Proceeds, the proposed repeal of existing 16 TAC §402.501 relating to Distribution of Proceeds for Charitable Purposes and proposal of new 16 TAC §402.501 relating to Charitable Use of Net Proceeds, proposed amendments to 16 TAC §402.205 relating to Unit Agreements, proposed amendments to 16 TAC §402.203 relating to Unit Accounting, and proposed amendments to 16 TAC §402.604 relating to Delinquent Purchaser will be held on Wednesday, February 16, 2011, at 10:00 a.m. at 611 E. 6th Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, and Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-201100278
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 21, 2011

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Notice of Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments to 16 TAC §401.305 relating to "Lotto Texas" On-Line Game Rule, 16 TAC §401.315 relating to "Mega Millions" On-Line Game Rule, and 16 TAC §401.317 relating to "Powerball" On-Line Game Rule will be held on Wednesday, February 16, 2011, at 2:00 p.m. at 611 E. 6th Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, and Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-201100283
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 21, 2011

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Texas Public Finance Authority

Notice of Public Hearing

Cosmos Foundation, Inc. Education Revenue Bonds, Series 2011a (Issued by the Texas Public Finance Authority Charter School Finance Corporation)

Notice is hereby given of a public hearing to be held on behalf of the Texas Public Finance Authority Charter School Finance Corporation on February 18, 2011, at 10:00 a.m. in the Conference Room, Suite 411 at the Texas Public Finance Authority, William P. Clements State Office Building, 300 W. 15th St., Austin, Texas 78701 with respect to the captioned bonds (the Bonds) to be issued in a principal amount not to exceed $90,000,000 by the Texas Public Finance Authority Charter School Finance Corporation. The proceeds of the Bonds will be loaned to Cosmos Foundation, Inc., a Texas non-profit corporation (the School) for the following purposes (items 1 through 46 below are herein referred to as the Project):

(1) financing certain costs for site improvements, design, construction, renovation, and/or equipment of educational facilities, including the construction of an approximately 14,000 square foot building, all located at Harmony Science Academy - Bryan/College Station, 2031 S. Texas Ave., Bryan, Texas 77802;

(2) financing certain costs for site improvements, design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 42,000 square foot building, all located at the Harmony School of Nature, corner of Camp Wisdom Road and Eagle Ford Drive, Dallas, Texas 75249;

(3) financing certain costs for site improvements, design, construction, renovation, and/or equipment of educational facilities, including the construction of an approximately 73,395 square foot building, all located at the Harmony School of Fine Arts, 9185 Kirby Dr., Houston, Texas 77054;

(4) financing certain costs for site improvements, design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 10,000 square foot building, all located at the Harmony Science Academy - Lubbock, 1516 53rd Street, Lubbock, Texas 79412;

(5) financing certain costs for site improvements, design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 74,700 square foot building, all located at the Harmony School of Excellence - San Antonio, Northwest corner of Montgomery Drive and Glen Mont, approximately 0.50 miles West of Farm-to-Market Road 1976, Bexar County, Texas;

(6) financing certain costs for the acquisition of land and the design, construction, renovation, and/or equipment of educational facilities, including the construction of an approximately 67,352 square foot building, all located at the Harmony School of Science NW, 3100 North Sam Houston Parkway West, Houston, Texas 77038;

(7) financing certain costs for site improvements, design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 59,500 square foot building, all located at the Harmony School of Innovation, 9317 W. Sam Houston Pkwy., Houston, Texas 77099;

(8) financing certain costs for site improvements, design, construction and renovation and/or equipment of educational facilities, including the construction of an approximately 13,000 square foot building, all located at the Harmony School of Ingenuity, 10555 Stella Link Road, Houston, Texas 77025;

(9) financing certain costs for the acquisition of land and the design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 65,000 square foot building, all located at the Harmony School of Political Sciences and Communication, 13175 Research Blvd. (Hwy. 183 North) - frontage on Hwy. 183 between Hunters Chase Road and Anderson Mill Road, Austin, Texas;

(10) financing certain costs for site improvements, design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 65,000 square foot building, all located at the Harmony School of Advancement - Houston, corner of NE W. Airport Blvd. and Eldridge, Sugar Land, Texas 77478;

(11) financing and reimbursing certain costs for the acquisition of an existing building, site improvements, design, construction, renovation, and/or equipment of educational facilities, all located at the Harmony Science Academy - Houston, 5435 S. Braeswood Blvd., Houston, Texas 77096;

(12) financing certain costs for site improvements, design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 22,000 square foot building, all located at the Harmony Science Academy - Austin, 930 E. Rundberg Lane, Austin, Texas 78753;

(13) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Excellence - Austin, 2100 E. St. Elmo Rd., Austin, Texas 78744;

(14) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - North Austin, 1421 Wells Branch Pkwy, Suite 200, Pflugerville, Texas 78660;

(15) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Innovation - Dallas, 1024 Rosemeade Pkwy, Carrollton, Texas 75007;

(16) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Innovation - El Paso, 5210 Fairbanks Dr., El Paso, Texas 79924;

(17) financing and reimbursing certain costs for the construction, renovation, and/or equipment of educational facilities, all located at the Harmony Science Academy - Dallas, 11995 Forestgate Drive, Suite 100, Dallas, Texas 75243;

(18) financing and reimbursing certain costs for the construction, renovation, and/or equipment of educational facilities, all located at the Harmony School of Discovery - Houston, 6270 Barker Cypress Road, Houston, Texas 77084;

(19) financing and reimbursing certain costs for the construction, renovation, and/or equipment of educational facilities, all located at the Harmony Science Academy-Garland, 2302 Firewheel Pkwy., Garland, Texas 75040;

(20) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy-Northwest, 16200 Tomball Pkwy., Houston, Texas 77086;

(21) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Excellence, 7340 N. Gessner Dr., Houston, Texas 77040;

(22) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Excellence - Endeavor, 5668 West Little York Road, Houston, Texas 77091;

(23) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Science - Houston, 13415 West Bellfort, Sugar Land, Texas 77478;

(24) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Science - Austin, 11800 Stonehollow Dr., Austin, Texas 78758;

(25) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Fort Worth, 5651 Westcreek Dr., Fort Worth, Texas 76133;

(26) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Grand Prairie, 1102 NW 7th Street, Grand Prairie, Texas 75050;

(27) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Euless, 701 S. Industrial Blvd., Euless, Texas 76040;

(28) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - El Paso, 9405 Betel Dr., El Paso, Texas 79907;

(29) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - San Antonio, 8505 Lakeside Parkway, San Antonio, Texas 78245;

(30) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Beaumont, 4055 Calder Avenue, Beaumont, Texas 77706;

(31) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Waco, 1900 North Valley Mills Drive, Waco, Texas 76710;

(32) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Brownsville, 1124 Central Blvd., Brownsville, Texas 78520;

(33) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Laredo, 4401 San Francisco Ave., Laredo, Texas 78041;

(34) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Political Sciences and Communication, corner of FM 620 Road and Lake Creek Parkway, Williamson County, Austin, Texas 78717.

(35) financing certain costs for site improvements, design, construction, renovation, and/or equipment of educational facilities, including the construction of an approximately 59,500 square foot building, all located at Harmony Teacher School, Westpark Tollway@Grand Parkway, Katy, Texas;

(36) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Political Sciences and Communication - Austin, Section of Lake Creek Parkway and FM 620 Road, North, Austin, Texas 78717;

(37) financing certain costs for the acquisition of land and the design, construction, renovation, and/or equipment of educational facilities, including the construction of an approximately 48,000 square foot building, all located at the Harmony School of Innovation - Fort Worth, 8080 W. Cleburne Road, Fort Worth, Texas;

(38) financing certain costs for site improvements, design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 48,000 square foot building, all located at the Harmony School of Nature - Houston, 0 Southwest Freeway, Sugar Land, Texas;

(39) financing and reimbursing certain costs for the construction and renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Odessa, 2755 N. Grandview, Odessa, Texas 79762;

(40) financing certain costs for the acquisition of land and the design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 48,000 square foot building, all located at the Harmony School of Business, S.H. 190 and Frankford Road, Collin County, Texas;

(41) financing and reimbursing certain costs for the construction, renovation, and/or equipment of educational facilities, all located at the Harmony Science Academy - Dallas High, 12005 Forestgate Dr., Dallas, Texas 75243;

(42) financing and reimbursing certain costs for the construction, renovation, and/or equipment of educational facilities, all located at the Harmony School of Innovation - Dallas, 1024 W. Rosemeade, Carrollton, Texas 76040;

(43) financing certain costs for the acquisition of land and the design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 50,000 square foot building, all to be located at the Harmony School of Language - Houston, (1) W. Fernhurst and Cobia Dr., Katy, Texas; (2) Broadway and Hwy. 288, Pearland, Texas; (3) Texas 99 and Franz Rd., Katy, Texas; (4) Corner of Mandolin and Cypresswood, Houston, Texas; or (5) Beltway 8 and Hwy. 288, Houston, Texas.

(44) refinancing short term loans incurred for the construction, renovation and/or equipment of various education facilities;

(45) funding a debt service reserve fund or the purchase of a Reserve Fund Surety Policy and capitalized interest; and

(46) paying the costs of issuance of the Bonds.

The initial and exclusive operator of the Project and the educational facilities is and will be the School.

The public hearing will be conducted by Susan Durso, General Counsel of the Texas Public Finance Authority, or her designee (the Hearing Officer). All interested persons are invited to attend such public hearing to express their views with respect to the above-described project and the Bonds. Questions or requests for additional information may be directed to Thomas A. Sage, Esq. (telephone: (713) 220-3833). Any interested persons unable to attend the hearing may submit their views in writing to the Hearing Officer prior to the date scheduled for the hearing at fax number (713) 238-5040. This notice is published and the hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

TRD-201100225

Susan Durso
General Counsel
Texas Public Finance Authority
Filed: January 19, 2011

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on January 18, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of James Cable, LLC to Amend its State-Issued Certificate of Franchise Authority, Project Number 39080.

The requested amendment is to expand the service area footprint to include the City of Bowie and the unincorporated area within three miles around the City of Bowie in Montague County, Texas and to include Decatur and all of the unincorporated territory outside the city limits of Decatur, within 3 miles of the city limits of Decatur, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39080.

TRD-201100302
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 24, 2011

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on January 20, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of XIT Communications to Amend its State-Issued Certificate of Franchise Authority, Project Number 39096.

The requested amendment is to expand the service area footprint to include the city of Stratford, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39096.

TRD-201100303
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 24, 2011

♦ ♦ ♦

Notice of Application for Amendment to the Designations of Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 20, 2011, to amend designations as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417 and eligible telecommunications carrier pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Cumby Telephone Cooperative, Incorporated to Amend its Designation as an Eligible Telecommunications Carrier (ETC) and Eligible Telecommunications Provider (ETP), Docket Number 39097.

The company requests ETC/ETP designation to be eligible for federal and state universal service funds to assist it in providing universal service in Texas. Cumby requests an amendment to serve the entire study area of United Telephone Company of Texas d/b/a CenturyLink. Cumby requested simultaneous processing and approval of the ETC/ETP amendment. Cumby has requested approval of the application to be effective no earlier than 30 days after completion of notice in the *Texas Register,* in this instance, the effective date is March 7, 2011.

Persons who wish to comment upon the action sought should notify the Public Utility Commission of Texas no later than February 18, 2011. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 39097.

TRD-201100331
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 26, 2011

♦ ♦ ♦

Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on January 24, 2011, with the Public Utility Commission of Texas (commission) of a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The applicant will file the LRIC study on or after February 3, 2011.

Docket Title and Number: Application of Verizon Southwest for Approval of LRIC Study for Transparent LAN Service - Ethernet Virtual Private LAN (TLS-EVP-LAN) Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 39104.

Any party that demonstrates a justiciable interest may file with the administrative law judge written comments or recommendations concerning the LRIC study referencing Docket Number 39104. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin,

Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 39104.

TRD-201100319
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 25, 2011

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Texas Department of Transportation

Public Hearing Notice - Highway Project Selection Process and 2012 Unified Transportation Program

The Texas Transportation Commission (commission) will hold a public hearing on Thursday, February 24, 2011, at 9:00 a.m., in the Ric Williamson Hearing Room of the DeWitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas to receive public comments on the highway project selection process and the development of the 2012 Unified Transportation Program (UTP).

Transportation Code, §201.602 requires the commission to annually conduct a hearing on its highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. The UTP is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The commission recently adopted new rules located in 43 Texas Administrative Code Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to the project selection process and the development of the UTP.

Any interested person may appear at the hearing and offer comments or testimony, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the commission as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the commission reserves the right to restrict testimony in terms of time or repetitive content. A person may not assign a portion of his or her time to another speaker. Organizations, associations, or groups are encouraged to present their commonly-held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the subject matter of the hearing.

Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Brent Dollar, Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2383, or (512) 463-8955 at least two working days prior to the hearing so that appropriate arrangements can be made. Every reasonable effort will be made to accommodate the needs.

Highway project selection information and information regarding preliminary 2012 UTP funding levels will be available at the department's Finance Division, 150 East Riverside Drive, Austin, Texas 78704, or (512) 486-5043, and on the department's web site at: http://www.txdot.gov/public_involvement/utp.htm.

Interested parties who are unable to attend the hearing may submit written comments to the Texas Department of Transportation, Attention: Brian Ragland, P.O. Box 149217, Austin, Texas 78714-9217. The deadline for receipt of written comments is 5:00 p.m. on March 10, 2011.

TRD-201100329
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 26, 2011

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and 43 Texas Administrative Code §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.txdot.gov/public_involvement/hearings_meetings.

Or visit www.txdot.gov, click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-201100327
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 26, 2011

♦ ♦ ♦

Record of Decision - Grand Parkway, SH 99, Segment G

A Record of Decision (ROD) has been issued for the Final Environmental Impact Statement for the Grand Parkway (State Highway 99), Segment G from Interstate Highway 45 North (IH 45 (N)) to United States Highway 59 North (US 59 (N)) in Harris and Montgomery Counties, Texas. Segment G, as proposed, is a four-lane controlled access toll road with intermittent frontage roads from IH 45 (N) to US 59 (N) through Harris and Montgomery Counties, a distance of approximately 13.74 miles.

The ROD is available for viewing or copying at the Grand Parkway Association website: www.grandpky.com; at the Texas Department of Transportation's Houston District Office located at 7600 Washington Avenue, Houston, Texas; or at the offices of the Grand Parkway Association, located at 4544 Post Oak Place, Suite 222, Houston, Texas. For further information, please contact David Gornet, P.E. at (713) 965-0871 or Pat Henry, P.E. at (713) 802-5241.

TRD-201100330
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 26, 2011

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Rescind Notice of Intent I-69/TTC 69 - Environmental Impact Statement

Pursuant to 43 TAC §2.5(e)(2), the Texas Department of Transportation (department) is issuing this notice to advise the public that the Notice of Intent (NOI) to prepare a Tier One Environmental Impact Statement

(EIS) for the proposed extension of Interstate Highway 69 (I-69) from near Shreveport, Louisiana, and Texarkana, Texas, to the Texas-Mexico international border near Laredo and the Lower Rio Grande Valley is rescinded. The original NOI dated January 23, 2004, was published in the *Texas Register* (29 TexReg 724).

Using a tiered approach, the department in cooperation with the Federal Highway Administration (FHWA) prepared a Tier One EIS for the proposed extension of I-69. The proposed Tier One EIS was to evaluate the National High Priority Corridor 18 and Corridor 20 systems. In addition, I-69 was also being evaluated as part of the Trans-Texas Corridor (TTC) system which would have included lanes for passenger vehicles, separate lanes for trucks, rail lines, and a utility corridor. The I-69/TTC Tier One DEIS was released for public review and comment on November 13, 2007. A Notice of Availability (NOA) was published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9873). The department held public hearings on the Tier One DEIS in February and March of 2008. In June 2008, the department informed FHWA of their intent to eliminate the Tier One New Location Corridor Alternative and not advance it as an alternative for the I-69/TTC project. The department further recommended that only the use of existing and planned transportation facilities be advanced as the preferred alternative. The basis for this decision centered on consideration of environmental and transportation planning factors in combination with the technical comments received on the Tier One DEIS. Also, on January 6, 2009, the department unveiled Innovative Connectivity in Texas/Vision 2009 which defined a new vision for the department's corridor development process and resulted in the retirement of the Trans-Texas Corridor concept. As a result of the retirement of the TTC concept and the department's intent to only evaluate the use of existing and planned facilities to develop I-69, the project described and being evaluated under the above mentioned notices is no longer under consideration. As a result, the above referenced NOI is being rescinded. Questions regarding this notice should be directed to Doug Booher, Environmental Manager, Texas Turnpike Authority Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701. Mr. Booher can be reached by telephone at (512) 334-3801.

TRD-201100328
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 26, 2011

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Request for Proposals - Traffic Safety Program

In accordance with 43 TAC §25.901, et seq., the Texas Department of Transportation (department) is requesting project proposals to support the goals and strategies of a traffic safety program to reduce the number of motor vehicle related crashes, injuries, and fatalities in Texas. These goals and strategies form the basis for the Fiscal Year 2012 Highway Safety Performance Plan (HSPP).

The authority and responsibility of the traffic safety grant program derives from the National Highway Safety Act of 1966 (23 U.S.C. §401, et seq.), and the Texas Traffic Safety Act of 1967 (Transportation Code, Chapter 723). Traffic Safety is an integral part of the Texas Department of Transportation and works through the department's 25 districts for local projects. The program is administered at the state level by the department's Traffic Operations Division. The executive director of the department is the designated Governor's Highway Safety Representative.

The following information relates to the Fiscal Year 2012 Traffic Safety Grants - Request for Proposals. Please review the Fiscal Year 2012 Request for Proposals located on the web at https://www.txdot.gov/apps/eGrants/eGrantsHelp/rfp.html for details. Proposals for Highway Safety Funding are due to the department no later than **March 11, 2011,** 5:00 p.m.

All questions regarding the development of proposals must be submitted by sending an email to trf_rfp@dot.state.tx.us by 5:00 p.m. on February 18, 2011. A list of the questions, with answers (Q&A document) will be posted on this website by 5:00 p.m. on February 25, 2011.

Video conference training on submitting proposals using an on-line eGrants system will be offered at various department locations across the state. Please contact a Texas Department of Transportation Traffic Safety Specialist in your area or send a note to trf_rfp@dot.state.tx.us to learn about locations near you. Training sessions will be specific to the type of grant proposal being submitted, either Selective Traffic Enforcement Program (STEP) or General Traffic Safety. Potential subgrantees should attend the class appropriate to the type of grant proposal they intend to submit: **February 8, 2011 - STEP Grant training; February 9, 2011 - General Traffic Safety Grant training.**

The Program Needs section of the RFP includes a Performance Measures chart which outlines the goals, strategies, and performance measures for each of the Traffic Safety Program Areas. The department is seeking proposals in all program areas, but is particularly interested in proposals which address the specific program needs listed in the High Priority Program Needs subsection of the Program Needs section of the RFP.

The proposal must be completed on-line using the eGrants system which is available on the department's eGrants website located at: https://www.txdot.gov/apps/egrants.

TRD-201100326
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 26, 2011

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The University of Texas System

Invitation for Consultants to Provide Offers of Consulting Services

In accordance with the provisions of *Texas Government Code,* Chapter 2254, The University of Texas at Austin (U.T. Austin) is seeking to contract with a consultant firm to provide consulting services related to a brand and positioning market study for the Jack S. Blanton Museum of Art (Consulting Services).

The President of U.T. Austin has made a finding of fact that the Consulting Services are necessary. While U.T. Austin has a substantial need for the Consulting Services, U.T. Austin does not currently have the in-house expertise to complete this project. Furthermore, U.T. Austin cannot obtain the necessary Consulting Services through a contract with another state governmental agency.

U.T. Austin will:

(a) select the consultant based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the Consulting Services; and

(b) if other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

To obtain a copy of the Invitation for Offers for the Consulting Services identified in this Notice contact:

Marcus Grimes

Buyer III

The University of Texas at Austin

Purchasing Department

MAI Bldg. Room 132, Inner Campus Drive

Austin, TX 78712

Attn: Marcus D. Grimes

Voice: (512) 471-2861

Email: mgrimes@austin.utexas.edu

Offers must be received by U.T. Austin no later than Friday, February 25, 2011 at 2:30 p.m. Central Time.

TRD-201100324
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: January 26, 2011

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Notice of Intent to Seek Consultant Services

The University of Texas Health Science Center at Houston

In accordance with the provisions of Texas Government Code, Chapter 2254, The University of Texas Health Science Center at Houston will be seeking Invitation for Offers to hire a consultant to create a communications program.

The President of The University of Texas Health Science Center at Houston has made a finding of fact that the consulting services are necessary. The University of Texas Health Science Center at Houston does not currently have the in-house expertise to complete this project.

An award will be made to the proposer that submits the highest ranked proposal based on evaluation criteria developed by the University.

Parties interested in a copy of the Invitation for Offers should contact:

Carletha Hughes C.T.P.

Buyer II

Procurement Services

The University of Texas Health Science Center at Houston

1851 Crosspoint, OCB 1.160

Houston, TX 77054

Voice: 713-500-8164

Email: carletha.hughes@uth.tmc.edu

The proposal submission deadline will be Thursday, February 24, 2011 at 2:00 p.m. Central Standard Time.

TRD-201100307
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: January 24, 2011

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Texas State University System

Request for Qualifications

In accordance with Texas Government Code, Chapter 2254, Subchapter A, the Professional Services Procurement Act, and with the delegation of authority from the Texas State Auditor's Office per Texas Government Code, §321.020, the Texas State University System Foundation (TSUSF) is seeking responses (qualification statements) to this solicitation from qualified individuals or firms (Respondents) to perform the professional services ("Work" or "services") described below for the performance of audit activities for TSUSF.

The requested audit services include, specifically, a review of expenditures relating to Hurricane Rita (including compliance with legislation regarding proportionate spending among insurance reimbursements, FEMA, and state appropriations) and the internal audit portion of the Texas Higher Education Coordinating Board (THECB) facilities audits for the four campuses. Other work will be on an agreed-upon basis as determined by the TSUSF Executive Director (Director) and the selected Respondent.

The selected Respondent will work closely with the Director and shall:

- Ensure compliance with relevant applicable auditing standards and Texas Government Code, Chapter 2102, in the performance of services;

- Complete work in a timely manner; and

- Maintain a high degree of confidentiality throughout the process.

Responses shall contain, at a minimum, the following information:

- A description of the Respondent's qualifications for performing such services;

- A description of prior experience in performing audit-related services at Texas state agencies and/or institutions of higher education;

- A description of prior experience in providing audit services related to reviews of expenditures resulting from hurricanes;

- A description of the Respondent's efforts to encourage and develop the participation of minorities and women in the provision of the services.

Responses shall be evaluated based on the criteria below:

- Prior experience in providing audit services related to reviews of expenditures resulting from hurricanes;

- Experience in performing audit services at Texas state agencies and/or institutions of higher education.

If additional information or clarification is required, the Director shall make written requests to the appropriate Respondent(s) and will require all responses to be made in writing.

It is the intent of the TSUSF to enter into one contract with the selected Respondent to perform the services described in this document. The Director, in consultation with the Chair of the TSUS Finance and Audit Committee, shall be the sole judge in making this determination. Upon selection, the successful Respondent shall be requested to provide pricing for the described professional services an estimate for budgetary purposes.

If your firm is interested, please submit a written response by February 4, 2011 5:00 p.m. to:

Mr. Cletus Bianchi

Executive Director

Texas State University System Foundation

Thomas J. Rusk Building

200 E. 10th Street, Suite 600

Austin, TX 78701-2407

Please ensure the response envelope is clearly marked "RESPONSE TO RFQ."

If you have questions, please submit your questions via email to cletus.bianchi@tsus.edu.

TRD-201100333
Fernando Gomez
Vice Chancellor and General Counsel
Texas State University System
Filed: January 26, 2011

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Texas Water Development Board

Request for Applications

The Texas Water Development Board (TWDB) requests, pursuant to 31 Texas Administrative Code (TAC) §355.92, the submission of regional water planning applications leading to the possible award of contracts to revise or update regional water plans as described in 31 TAC Chapter 357. In order to receive a grant, the applicant must be a political subdivision of the state and must have been designated an eligible applicant by a regional water planning group as defined in 31 TAC §355.91. 31 TAC Chapter 355, Subchapter C provides guidance for regional water planning grants.

Description of Funding Consideration

Total funding for activities related to the development or revision of a regional water plan shall not exceed 100 percent of the total cost of the planning for that regional water planning area as defined in 31 TAC §355.91. Funds awarded for grants under this request for applications may total up to the remaining amount of funds appropriated for such activities for the Fiscal Year 2010-2011 biennium.

Funding is provided on a not-to-exceed basis for certain planning tasks as outlined in the Guidance for Preparation of the Application for Regional Water Planning Funding. As further outlined in this Guidance, provisions exist for additional funding, if made available, for the tasks not addressed in this application. In the event that acceptable applications are not submitted or that insufficient funds are available to fund proposed activities, the TWDB retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information

Five double-sided copies and an electronic version of a complete regional water planning grant application must be filed with the Board prior to 5:00 p.m., April 8, 2011. All applications should be prepared using the TWDB's application instruction sheet for Regional Water Planning Grants and the Guidance for Preparation of the Application for Regional Water Planning Funding. Applications will be evaluated according to the criteria listed in 31 TAC §355.94. All potential applicants may contact the Board to obtain the application checklist and guidance documents or they may be obtained from the Texas Water Development Board's webpage at: http://www.twdb.state.tx.us/wrpi/rwp/rwp.asp.

Applications must be directed either in person to David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas, or by mail to David Carter, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231. Requests for information, the Board's rules, and instruction sheet covering the research and planning fund may be directed to Temple McKinnon at the preceding address or by calling (512) 475-2057, or by e-mail at temple.mckinnon@twdb.state.tx.us.

TRD-201100237
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: January 21, 2011

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Requests for Statements of Qualifications for Water Research

Pursuant to 31 Texas Administrative Code §355.3, the Texas Water Development Board (TWDB) requests the submission of Statements of Qualifications leading to the possible award of contracts for continued development of a unified framework for managing coastal data. The contract is expected to last approximately 4 months. Guidelines for Statements of Qualifications, which include an application checklist will be supplied by the TWDB upon request.

Description of Research Objectives

The contract is for the purpose of preparing and importing historical bay and estuary program data into a system which interoperates with the Coastal Geodatabase, a component of the Texas Hydrologic Information System (TxHIS). The Surface Water Resources Division (SWR) maintains numerous data sets covering all of the major and minor bay systems along the coast and many of the state's river basins, extending back several decades. With the advent of the Senate Bill 3 process for environmental flows, SWR is under increasing pressure to deliver data in a timely fashion with appropriate metadata and quality control. To meet these demands, this project will focus on building the infrastructure and software required to bring all data into a web accessible database and to provide a semi-automated tracking procedure to ingest, quality control, and disseminate data to customers. Additionally, completion of this task will allow SWR staff to efficiently access data and employ automation procedures for the various numerical models in use. Although several components of this proposal have been designed and implemented by SWR staff, additional work is required to complete and integrate these components into a unified framework. The project will involve the contractor working onsite to complete and integrate these components.

The TWDB website site includes (1) guidelines for the Statements of Qualifications, (2) copies of the attachments, (3) a list of Statement of Qualifications Review Criteria, and (4) some supporting material: http://www.twdb.state.tx.us/publications/requestforproposals/requestforproposals_index.asp

The Statement of Qualifications shall not be more than 15 pages in length, and should list the qualifications and experience of staff member who will be working onsite. Applicants should be knowledgeable in the following areas:

1. Demonstrated experience in Python programming

2. Demonstrated experience in developing SOAP web services in Python

3. Demonstrated experience retrieving data from SOAP web services

4. Demonstrated experience with retrieving, manipulating and disseminating time series water quality data

5. Demonstrated experience developing web applications using web.py

6. Demonstrated experience with WaterML, WBX or similar water data related XML schemas

7. Demonstrated experience with sqlalchemy and MSSQL

Description of Funding Consideration

Up to $45,000 has been identified for this research study from the TWDB's Research and Planning Fund. Following the receipt and evaluation of all Statements of Qualifications, oral presentations may be required as part of qualification review. However, invitation for oral presentation is not an indication of probable selection. Up to 100 percent funding may be provided to individual applicants. In the event that acceptable Statements of Qualifications are not submitted, the TWDB retains the right to not award funds for the contracts.

Deadline, Review Criteria, and Contact Person for Additional Information

Six double-sided copies of a complete Statement of Qualifications, including the required attachments, must be filed with the TWDB prior to 12:00 noon, **February 25, 2011.** Statements of Qualifications must be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas; or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231-Capitol Station, Austin, Texas 78711-3231. Statements of Qualifications will be evaluated according to 31 Texas Administrative Code §355.5 and the Statements of Qualifications Review Criteria rating form included in the TWDB's Guidelines for Water Research Grants. Research shall not duplicate work planned or underway by state agencies. All potential applicants may contact the TWDB to obtain these guidelines or visit the TWDB website at http://www.twdb.state.tx.us/publications/requestforproposals/requestforproposals_index.asp.

Requests for information, the TWDB's rules covering the Research and Planning Fund, detailed evaluation criteria, more detailed research topic information, and the guidelines may be directed to Mr. David Carter at the preceding address or by calling (512) 936-6079.

TRD-201100309
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: January 25, 2011

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*